SENATE—*Friday, July 8, 1988*

The Senate met at 9:30 a.m., and was called to order by the Honorable HARRY REID, a Senator from the State of Nevada.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Gracious Father in heaven, "God of all comfort," You know the ambivalence all feel about the Persian Gulf tragedy. We pray for the families of those who died in the airliner crash. We know there is no adequate way to respond to their loss—but we ask You to comfort them as only You are able. Surprise them with the peace of God, "the peace that passeth understanding."

We pray for Capt. Will Rogers III, the officers and crew of the *Vincennes,* and for their families, that they may experience the peace of God.

We pray for ourselves. Tragedy like this, never fully explained, tends to divide and alienate. Give us the grace to leave judgment to Thee and unite in the way of peace.

In the name of the Prince of Peace we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 8, 1988.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HARRY REID, a Senator from the State of Nevada, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

Mr. REID thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is now recognized.

THE JOURNAL

Mr. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, that will be the order.

RESERVATION OF LEADER TIME

Mr. BYRD. Mr. President, I ask unanimous consent that the time of both leaders be reserved.

The ACTING PRESIDENT pro tempore. Without objection, that will be the order.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein for not to exceed 5 minutes.

WHY THE NEXT PRESIDENT WHO EVER HE IS WILL INCREASE TAXES

Mr. PROXMIRE. Mr. President, no one writing today can more clearly define the great issues separating conservatism and liberalism than the brilliant New York Times columnist, William Safire. In his June 27, New York Times column Safire contends that the tax issue in the Presidential campaign is simple. GEORGE BUSH opposes any tax increase. Michael Dukakis will call for a tax increase. It will be "a last resort call"—says Safire but Dukakis will make it. What could be plainer? If Safire were right, which he emphatically is not and if you want your taxes increased you vote for Dukakis. If you do not want your taxes increased you vote for BUSH. If you do not believe Dukakis will raise taxes, writes Safire, just look at his record in Massaschusetts. Sure Safire admits Dukakis cut Massachusetts spending plans but "slightly"; now let us look at his record. He raised the Massachusetts cigarette tax 5 percent. How about that? Safire's contention that Dukakis would raise Federal taxes is based on a 5-percent hike in the cigarette tax. Meanwhile as Safire admits, the Reagan administration has presided over four major tax increases. Safire conspicuously omits any reference to one of these tax increases. Which one? The tax increase Safire ignores is the Reagan increase in the Social Security payroll tax that hikes that tax by roughly 15 percent. That payroll tax has now become the biggest tax paid by the great majority of Americans. For single earner families with less than $30,000 in income the payroll tax is now their No. 1 tax burden. It is bigger than the Federal income tax. For two-earner families—with less than $40,000 in income per annum, again the payroll tax is the big enchilada. The administration presided over three other major tax increases, while the Dukakis administration in Massachusetts settled for a piddling 5 percent increase in the cigarette tax. So much for the record on taxes.

On spending, Safire argues that most Republicans resist increases, preferring to reduce the growth of domestic spending. He doesn't mention that most Republicans prefer to increase military spending. Since neither party has proposed to cut Social Security benefits and since social programs aside from Social Security are less than the $300 billion annually included in the military budget, Safire must make the case that Democrats supported spending increases for social programs other than Social Security are greater than Republican supported increases for military programs. He doesn't make the case. Why doesn't he? Because he can't.

The fact is that there is no Republican and no Democrat in the Congress whose record in opposing spending would give the country a balanced budget without a tax increase. What would have been the result if President Reagan had his way? Answer: President Reagan could have had his way with the Congress in every single spending measure that has come before the Congress in the past 7½ years. The result: The aggregate deficits would actually have been bigger than they have been.

Safire does claim that "revenues have gone up in an era of noninflationary prosperity, as promised by the supply siders years ago." They have, indeed. But the deficit has gone up even faster. And the huge deficits have, indeed, stimulated the economy—as they always do. They have brought in additional revenues. But not nearly enough. Result: The Federal debt has climbed to a towering $2½ trillion. The net interest on that debt—that is the part paid to the public—has zoomed to more than $150 billion per year. Interest on the debt has now become the single fastest growing cost of Government. It is also the most useless. It provides neither military security nor environmental protection. It does not provide education for even one child, nor housing for a single homeless family. And yet it is the one expenditure that the Government must pay in time and in full.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

It cannot be reduced. The national debt would be about $20 billion more than it is today.

This Senator happens to favor the most drastic possible reduction of all Federal spending. We should cut social programs. We should cut military programs. We should hold down the enormous increases in spending recommended by the administration for the National Science Foundation and for a $30 billion space station, and a multibillion-dollar atom smasher. We can both cut military spending and have a stronger defense vis-a-vis the Soviet Union in two ways:

First. By eliminating wasteful procurement of obsolete military weapons like the B-1 bomber, by sharply cutting the strategic defense initiative [SDI] and by relying less on the regular services and more on the most efficient provider of military service, the Reserve and the National Guard. The Guard and Reserve cost only 5 percent of all military expenditures and provide 45 percent of the military services;

Second. We can take advantage of the Soviet proposal to negotiate a mutual reduction of conventional weapons with the Soviets. They have agreed that they would negotiate such a reduction and because the Soviets have more tanks, planes, artillery, and personnel, they recognize they would have to make greater reductions than the United States. So what are we waiting for?

Let us not kid ourselves. Neither the Congress nor the American public is willing to make the kind of reduction in Federal spending necessary to significantly reduce the deficit without a tax increase. This means we need a tax increase to prevent our enormous deficit from continuing year after year to pile a mountain of indebtedness on this country.

Mr. President, I ask unanimous consent that the column to which I have referred by William Safire from the June 27, New York Times be printed in the RECORD.

There being no objection, the column was ordered to be printed in the RECORD, as follows:

FIRST LAST RESORT

(By William Safire)

WASHINGTON.—We are now vividly presented with evidence of the deep difference between George Bush and Michael Dukakis on the central issue of taxing and spending.

"We've run into a rather modest unexpected shortfall," said Governor Dukakis about a $200 million deficit in the Massachusetts budget, which by law must be balanced.

His solution in his state was as clear a signal as we will get about his future actions, if elected President: He went both ways. He trimmed spending plans slightly and—calling it a "last resort"—raised the state cigarette sales tax 5 percent. Tax hikes have been, are now, and would continue to be central to the Dukakis approach.

George Bush takes a contrary view. "I am not going to raise your taxes, period," he says with all the finality he can muster.

G'wan, scoffs Mr. Dukakis, that's what Reagan promised, and his Administration raised taxes four times in the past six years.

That's a most revealing dodge. The first tax increase snookered out of Ronald Reagan was part of a deal with Tip O'Neill to cut spending three dollars for one, and Congress double-crossed the Administration on the spending end. The most recent tax increase was demanded by Democrats in another spending-reduction trade to reassure financial markets after the October crash.

The Federal deficit (or "rather modest shortfall," if you prefer) is not the result of the Reagan tax cuts, as liberals insist; revenues have gone up in an era of noninflationary prosperity, as promised by the supply-siders years ago. The red ink was caused by the shameful, bipartisan unwillingness to curb spending.

Begin with a couple of givens. 1. Facing red ink, most Republicans resist tax increases, preferring to reduce the growth of domestic spending and to increase economic growth with its attendant revenues. 2. Facing the same red ink, most Democrats resist spending cuts (except in defense); when the moment of decision arrives, they prefer to increase taxes.

Liberals can face that fact honestly, as Walter Mondale did; or with deceptive painlessness, as Jesse Jackson does with his soak-the-rich tax schemes; or grudgingly, as Mr. Dukakis does with his "last resort" protestations. But increased taxation is a basic tenet of liberal philosophy; the ideological difference with conservatives cannot be denied.

Now we come to how that real difference is evaded. Liberal editorialists will condemn Mr. Bush's pledge as irresponsible pandering to the selfishness of voters. They will hail Mr. Dukakis for making the "tough choice" against cutting popular services. Not many are willing to assert a philosophy of using government power to redistribute income in the name of fairness or compassion, or even standing on fiscal responsibility.

Liberals evade that issue because they know that most wage earners would like to believe that tax cuts, not tax hikes, are good for the country—as the current prosperity suggests. But perhaps these worker-voters can be reached by skepticism; if Reagan weakened despite his pledges, wouldn't Bush cave in too? In that case, goes the nonargument, what difference would a Democrat in the White House make?

Therein lies the shrewdness of the Dukakis dodge. His repeated point about four tax increases in the past six years is his way of saying: There's no real difference in the parties on this. Whichever way you vote, in the end you'll get a tax increase. It's not an issue at all. Forget it.

That message is a deception. If Mr. Bush is elected, he would engage the Democratic Congress in a series of budget battles. Because the President is not a dictator, he would be forced to cave in from time to time, causing rightwingers to grump about compromises. But his no-tax-hike pledge would surely be a brake on the Congressional urge to tax and spend.

If Mr. Dukakis is elected, he would act next year as he acted last week: trim here and there, but then take a frequent flyer to the last resort. He would accelerate rather than brake the spending urge in Congress.

Thus, we have a genuine ideological conflict in prospect, which is what campaigns are for. Debate on the wisdom of more taxation is intellectually respectable; the attempt to smear it as making no difference, or as vote-buying, is political cowardice.

Mr. Bush should press the point because the voters' choice will affect tax policy. Mr. Dukakis should be encouraged to defend his tax philosophy on whatever grounds he chooses—including the weakest defense of a last resort.

MERIT AWARD GOES TO WISCONSIN'S DEPARTMENT OF PUBLIC INSTRUCTION

Mr. PROXMIRE. Mr. President, as you and my colleagues of the Senate know, in March 1975, I decided to establish a monthly award for the most absurd example of waste accomplished by one agency or another—The Golden Fleece Award.

Instead of a Golden Fleece Award for the month of July, I am giving Wisconsin's Department of Public Instruction an award of merit for the outstanding leadership they have demonstrated in working for progress in education reform.

One of our Nation's most valuable assets is education. Education provides our young people with the skill, knowledge, and opportunity to make crucial lifetime decisions.

Five years ago, "A Nation at Risk" report was submitted to the public from the National Commission on Excellence in Education. It was a fairly critical report of our Nation's education system. The report referred to our educational performance as mediocre. Secretary of Education William Bennett has also been critical of today's education and recently gave America's schools a grade of C.

I am happy to say that our education system is improving and much needed reform has begun to take place. This Senator wishes to commend Wisconsin's education personnel for being leaders among the States in education reform.

Here are the facts:

First, Wisconsin High School students continue to rank extraordinarily high on standardized tests that are used as part of the college entrance requirements. In the last 5 years, our students have ranked No. 1 or 2 on the Achievement College Test [ACT]. In fact, Wisconsin scored No. 1 in the 1986-87 school year. Also, Wisconsin had 15 percent of its seniors take the Scholastic Aptitude Test [SAT] in the 1986-87 school year and they again ranked No. 1.

Second, The State Department of Public Instruction's budget request includes funds to support district competency based testing. According to the new State standards, the DPI requires all districts to administer achievement tests in basic subjects.

Third, Wisconsin school districts are in the process of implementing the

State's education standards. These standards were part of the 1985-87 budget bill. The Standards help assure that children across the State have access to the best education possible. The standards deal with teacher certification, staff development, children at risk, and high school graduation requirements to name a few.

Fourth, Wisconsin's high school drop out rate is among the lowest in the Nation. In 1986 Wisconsin had a graduation rate of 86.3 percent. The national average was 71.5 percent. In spite of the 86.3 percent, 8,000 students left school before graduation during the 1986-87 school year. To help address the problem, Wisconsin is seeking State funding for an early childhood education program for urban and rural disadvantaged children.

Fifth, The State department of public instruction developed the 1984 children at Risk Initiative which has placed Wisconsin as a leader in identifying children at risk. Children at Risk are defined as those students who experience problems that interrupt or disrupt their learning, school attendance, or progression toward graduation. The DPI is involved in grant support for programs addressing problems facing youth like school age parents, teen suicide, and alcohol abuse.

Sixth, Wisconsin also has new initiatives for teacher education programs to assure that those entering the teaching profession are well qualified. Some of these include requiring 100 hours of clincial experience before student teaching, those graduating in teacher education must rank in the top 50 percent of the class and the teacher education program must include study of at risk youth and human relations.

These are just a few of the initiatives the Wisconsin Department of Public Instruction is administering.

I believe our education system is good and getting better. More and more State initiatives are becoming realities. I salute the teachers, administrators, parents and students in Wisconsin for demonstrating concern and competence in education reform.

ISLAND OF OPPORTUNITY

Mr. PROXMIRE. Mr. President, Keith Jensen from Eau Claire, WI, recently won a $500 scholarship for his essay "Island of Opportunity." The nationwide contest, sponsored by the Friends of Free China, required students to write a 1,000-1,500 word essay on the topic "How Freedom Affects Progress" and relate it to the people of Taiwan.

Keith has written an insightful and very informative essay contrasting the societies and economies of People's Republic of China and Taiwan. He is to be commended for a job well done.

At this time, I ask unanimous consent that Keith's essay to be printed in the RECORD as an example of the excellent work that is exemplified by the students of Wisconsin.

There being no objection, the essay was ordered to be printed in the RECORD, as follows:

ISLAND OF OPPORTUNITY

(By Keith Jensen)

Somewhere behind the folded curtain of China's borders, a 38-year old electrician named Wei Jingsheng is spending time in prison; much of the duration in solitary confinement. Wei's supposed crime: critisizing "Paramount Leader" Deng Xiaping and the Party. The sentence: 15 years. Deng came into power in 1977 and Wei, with others like him, hoped desperately for a China unleashed from communism's political and economic straitjackets. Wei ventured to write on a wall in downtown Beijing: "Just ask yourself, Chinese workers and peasant, whose masters are you? Or what do you own? To spell it out is pitiful. Others are your masters . . . a very small percentage of the hundreds of millions of people, the Party leader."[1] Today the Communist Party of China is the master; the ultimate authority in every area. The people are apt to be called pawns playing the game of the very few—the Party Leaders.

An entirely different situation exists upon the small island of Taiwan. The people here are the masters of the government because the government is democratically controlled by the people and is limited by them and their constitution. The result is an affluent, prosperous, pluralistic society never before witnessed in all China's history. Achievements particularly in the areas of religion, the economy and in social conditions have established a model for all of China to follow.

First, generally speaking, the people of China have not been extremely religious. But throughout the centuries Buddhist and Christian missionaries have converted millions to their religions. In past years, attempts have been made to strengthen religion in mainland China by outside sources. However, this has been for naught; the communist society and philosophy has attempted to forge into machines without a soul receptive to religious doctrine.

While this nation possesses a so-called "Patriotic Catholic Association of China" for a national church, it is highly opposite to a true Catholic Church. The fact that it has no ties with the Vatican in Rome is proof enough.[2] The word "patriotic" perfectly summarizes the true purpose of this church. Its existence is only for use as a tool by the all-controlling communist government. This association strictly upholds the government's pro-abortion theme for population control. In short, religion in communist China is a farce; a joke and a supposed right that simply does not exist in any form worth having.

Taiwan's policies of liberty and capitalism allow people to worship when they want, where they want, and in any fashion they desire. This can be fully realized by knowing that presently 292,000 Catholics worship on Taiwan without fear of the restrictions which exist a short 90 miles distant.

Besides a great number of Catholics, Taiwan is able to boast a total of 57 different Protestant denominations along with the traditional eastern religions such as Buddhism and Taoism. Dr. Gwo Yun-han, Pastor of Grace Baptist Church in Taipei, has stated, "Taiwan's rapid economic and social change has produced significant challenges to all religious faiths. As people become better schooled, have more disposable income and become more urbanized, the earlier forms of social arrangements and personal expectations have rapidly altered. There are indeed serious needs for religious expression and belief. . ."[3]

A second area which determines the ultimate progress of a nation is the economy. A comparison of Red China and the ROC is an appropriate example of capitalism at its best and the ultimate result of communist philosophy. Red China over the past 39 years has not done reasonably well. One must ask why such a large country with so great a workforce has not pulled its people from the clutches of poverty. The land is rich in resources, but this is not reflected in the life of the people. This may be attributed to several factors. Red China's policy of equal distribution, in which all people are given the same portions, is not conducive for a good economy. It insults a person's sense of diligence because an individual, no matter how hard he works, will receive the same amount of pay and food. This condition has given communist China one of the poorest production rates in the world.

Mainland China has made several other major errors in her attempts to build a stable economy: one being to run it identical to the Stalin model—a system which has failed miserably. This type of model has two distinctions easily labeled as hindrances to progress. The government owns and runs most business and the party leaders decide what is to be produced. These two things prevent any form of competition and any amount of personal initiative. Red China has also made mistakes in areas of economic organization. Often they have put emphasis on heavy industry such as steel, iron and manufacturing equipment which are important to the country's defense while overlooking the area of agriculture and light industry which are essential for the daily standard of living.[4]

In 1986, Red China had an average per capita GNP of 240 US dollars while Taiwan had an average per capita GNP of 3751 US dollars.[5] Such a great difference speaks boldly for itself and proves many points that were once only theory. Taiwan's economy has year after year shown industrious trade and competition. Take for example these headlines from several issues of the Free China Journal.

[1]George Hicks, "Forever Red," The Reader's Digest CXXIX (December 1986), p. 103.

[2]Greg Sheridan, "A Sobering Survey of the Actual Situation in Communist China by a Questioning Traveler from Australia," Free China Review, (April, 1986), 58.

[3]Gwo Yun-han, "Protestants Spread The Good News," Free China Review. (January, 1988), p. 35.

[4]News item in the Free China Journal, June 22, 1987.

[5]News item in the Free China Journal, October 10, 1987.

"Fast Food Sweeps Taiwan; 42 Foreign Chains Now Here" (August 11, 1986)

"Information Industry's Export Grew by 77% in 1987" (Jan. 25, 1988)

"ROC Moving Up In World as Major Trading Power" (Jan. 4, 1988)

"Taiwan Stock Market Closes 1987 With a New Year Bang" (Jan. 4, 1988)

The ROC has created a balanced approach between strong trade, diligence in the business field and administrative planning. A strong, prevalent atmosphere of opportunity has been produced that strictly reflects Taiwan's attitude toward hard work and initiative. They are reaping the benefits of their labor and their economic system which is exemplified in every part of their lives.

Lastly, while Mainland China may have a poor economy and restrictive religion, the greatest sadness lies with the lack of civil liberty which her citizens possess. In 1985, an organization known as "Freedom House" rated Mainland China based upon the amount of civil liberties the people possesses. China was given a 6 on a scale of 1 to 7 (one being the best).[6]

There is proof for the cause of this low score. An activist by the name of Wei Chingsheng protested non-violently for a more democratic government. Irrevocably he was given a 15 year prison sentence. In another incident, the government took soon-to-be-executed prisoners and subjected them to mass criticism on how they had supposedly erred greatly in their ways. On another occasion, criminals were executed without trial and the due process of law.

Taiwan's constitution is designed to adequately protect her people's rights. President Han Leh-wu of the Chinese Association for Human Rights has said that the Republic of China will never cease its efforts to improve the human rights situation there.[7]

Despite the fact the Communist Chinese threat has never decreased, the ROC government lifted the previous Chieh-yen Decree and implemented the National Security Law. This law will meet the country's security needs and will protect the freedoms and rights of the people. In addition, it will remove previous bans on the formation and activities of political parties.[8]

In a regime where citizens have no influence of those in office, liberties are abused more often and to a greater extent because the government has nothing to fear from its citizens. This is the ultimate abuse of power and possession and the final result of a communist government. Thus one can observe that the ROC's government protects the liberties and rights of the people more adequately because the people are represented. In respect to religion individuals are given the opportunity to meet their soul's needs and develop spiritually as they might desire. Economically people are not restricted; instead they are placed in an environment of growth and prosperity; socially they are endowed with civil liberties that compliment every part of their lives.

In all three areas Taiwan has proven that freedom has affected progress as Free China has become the island of opportunity.

[6]Sheridan, *op. cit.*, p. 57.

[7]News items in the Free China Journal, August 11, 1986.

[8]News item in the Free China Journal, October 10, 1987.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, does any other Senator wish to speak in morning business?

The ACTING PRESIDENT pro tempore. Mr. Leader, the Chair, in his capacity as a Senator from the State of Nevada, wishes to speak for 5 minutes.

ORDER FOR 30-MINUTE RECESS AT 10 A.M.

Mr. BYRD. Mr. President, I ask unanimous consent that morning business continue until 10 o'clock, at which time the Senate stand in recess for 30 minutes.

The ACTING PRESIDENT pro tempore. Without objection, that will be the order.

(Mr. PROXMIRE assumed the chair.)

LEADERSHIP IN DEFENSE PROCUREMENT

Mr. GRASSLEY. Mr. President, one of the lessons of the current defense probe is that to get ahead, you have to play the "insider trading game." Winning a contract is based on who you know, not what you can do.

The relevant question we should be asking, is: Why haven't the Carlucci initiatives of the Packard recommendations worked? Why is it that "peek-a-boo procurement" is still the way to get ahead, instead of contracting by "performance" requirements?

Some suggest that the Carlucci initiatives were designed to create the perception of reform, but that actual and substantive change was never intended. Some would suggest that the Packard Commission was a very large valium for the body politic, and that true reform was not the intended goal.

Whether or not that is the case, it's plain that reform is still necessary.

I would suggest, Mr. President, that part of the solution for management reform in the Pentagon can be found in the Federalist Papers. In those papers, we find powerful arguments showing the need for checks and balances to avoid the grave dangers of a monopoly power. It is sufficiently known that the relationship between DOD and the defense industry is a bilateral monopoly: one buyer, and one seller for each item, with rare exceptions.

The fact of the matter is that there are few organizational checks and balances in the Defense Department. There is no independence of those functions responsible for monitoring performance. As a result, functions such as acquisition easily lend themselves to collusive fraud.

The most obvious case in point is the Packard Commission's recommendation to allow the contractors to police themselves. That means contract officials are on their honor to turn themselves in to the local sheriff if they commit fraud. Another case in point is the creation of the acquisition czar, as recommended, again, by the Packard Commission. One look at the responsibilities of the acquisition czar will show there are no checks and balances in that important position.

Here are the responsibilities of that office: all acquisition policy; contract audit policy; oversight of all acquisition programs; oversight of advanced technology programs; oversight of test and evaluation, both developmental and operational; and responsibility for independent cost estimates.

Again, where are the checks and balances?

Without checks and balances in the performance of defense procurement, the wisdom of establishing a czar is questionable. We expect a Peter the Great. But what we get is an Ivan the Terrible. That's no reflection on any current, past or future acquisition czar—it's merely the inevitable result of an organization that is susceptible to manipulation and collusive fraud.

Last week's papers contained a story about how the current acquisition czar sent a memo to the Secretary of Defense suggesting that DOD officials should have approval authority over search warrants. the inspector general and the Secretary of Defense rightfully denied the authority. Had the Assistant Secretary prevailed, law enforcement activities and antifraud efforts in the defense procurement process might have been severely hamstrung.

It is that kind of erosion of checks and balances within the Defense Department's organizational structure that poses the very real dangers inherent in a monopoly power.

The principle of checks and balances is what is so therapeutic about the Abe Lincoln bill passed by Congress just 2 years ago, and the Independent Testing Office. It's also why we need more real competition, why we need to close the revolving door, and why we need to keep operational separate from developmental testing.

Of course, these are all desired legislative reforms which already have or should be implemented. In their entirety, they would go a long way toward instituting the kinds of structural checks and balances needed to reform the way our defense community does business. However, let us be clear about what will bring about the desired change. As I mentioned, checks and balances are only half the battle. The real key to performance excellence in the defense procurement process is leadership and good people.

Our Government is in desperate need, as we and the public are now well aware, of leaders who will communicate policies not in terms of getting programs on-budget and contracts

signed, but leaders who will communicate policies that reflect deeply held values, like integrity, quality, and economy. Like sacrifice and discipline for the national security. The extent to which these values are absent from the defense procurement system should be a direct reflection on the leadership of our Defense Department.

Instead of acquisition czars and policies of self-policing by contractors, we need leaders and a few good people who will instill the kind of ethic and values that are clearly alien to the procurement process.

It is the presence of those values throughout the system, and practiced by the implementers of our policy, that will bring about change that is not just a perception.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Nevada [Mr. REID] is recognized.

PLO ARSON

Mr. REID. Mr. President, the Bible speaks of the land of Israel as a place flowing with milk and honey, in which could be found great forests to shade the brow of the weary traveler.

When the children of Israel began their return from the diaspora in the latter 9th century, they found that time, misrule, and the travails of 2,000 years of religious and political strife had laid waste their promised land.

Undaunted by the prospect of barren wastes where cities had risen, and swamps replaced the great forests, those first settlers began to rebuild. For them, every task was a delight, and every accomplishment a miracle.

Because they were the descendants of David, however, they took special delight in replanting the trees which had once blessed and cooled their land. Each sapling they planted was carefully nurtured, often watered by hand-carried buckets. As it spread its branches, those who walked below, Arab, Jew, Catholic, Protestant, or Greek Orthodox, may have stopped to thank the God to whom we all pray for the replenishment of nature's bounty.

There is a tradition in Judaism that from every bad thing some good must flow, and that in the midst of death we are in life. It is from that belief that there arose the custom of naming a newborn child after the most recently deceased. It was also from that tradition that there began, early in this century, another custom.

When someone died, to honor their memory, to make their name forever shine in the gratitude of weary travelers, to represent their love for the land of Israel, their survivors would plant a tree in the Holy Land. It was a beautiful custom, and it spread among many people as a means of honoring the living as well as the dead.

Following the Holocaust, the survivors, in Israel and throughout the world, looked for a means to enshrine the memory of the 6 million who died. What could have been more natural than to plant whole forests in their memory. Across the face of Israel groves of saplings reached for the Sun carrying their message of love and remembrance. Over 200 million trees bless the land and all the people therein. These trees, 200 million trees, have been planted since 1948.

Surely, no civilized person could intentionally desecrate those shrines of living memory? Certainly no one with a sense of decency could destroy the shrine which gives comfort to so many of every faith. And unquestionably, Mr. President, unquestionably nobody with a shred of humanity would dare contemplate destroying by fire the memorial to those who died in the gas chambers and ovens of Auschwitz, and Dauchau, and Belsen, and Treblinka.

No decent person I am sure would think of such a contemptible act. And yet, it is by the most cowardly means of fire in the night that the so-called Palestine Liberation Organization has chosen to attack the State of Israel.

Unwilling and unable to stand in fair combat against a nation outnumbered by millions, the PLO instead has chosen to attack the soul of the nation. By doing so it has once again demonstrated that when one chooses the path of cowardice as a thief in the night, he sets himself apart from any claim to the sympathy or respect of the civilized world.

In the 6 weeks preceding June 15, 567 arson set fires have destroyed 35,000 acres of agricultural land encompassing forests, fields, and farms. The unkindest cut of all, however, in this cowardly attack, was the fire which destroyed 300 trees in a Jerusalem cemetery.

The PLO and Yassir Arafat have called for more arson. Perhaps there are those who will continue to heed their call. There always seem to be some who are willing to destroy the land for their own ends, even when the harm they do is to their own as well as their supposed enemies.

When they do so, however, I want them to know that their actions are viewed with the rankest horror and contempt by every civilized person, and that rather than engendering any benefit for their cause, they create nothing but long-term disgust.

Our Nation has finally come to recognize what humanity has been doing to itself. In the United States, nearly 32 million acres a year of forest are destroyed. In far away Brazil, the destruction of the Amazon Rain Forest may well represent a threat to the long-term survival of mankind.

Israel is one of the few places instead of destroying that which God has given us, the desert has blossomed like a rose. That is what the PLO would destroy. I hope they are proud of themselves.

I come from a State, Mr. President, where trees are confined by nature to the mountains, and where among those trees we do have the oldest living things on Earth, the bristlecone pines. Nevadans know what a blessing the shade is to a desert people. We know the truth of Joyce Kilmer's thought that only God can make a tree and we know the character of those who would destroy a forest by arson.

I want the PLO to understand that we know, and that we will not forget.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

(The remarks of Mr. DIXON pertaining to the introduction of legislation appear in today's RECORD under Statements on Introduced Bills and Joint Resolutions.)

Mr. DIXON. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. That will be the order.

BICENTENNIAL MINUTE

JULY 5, 1909: SENATE ADOPTS INCOME TAX AMENDMENT

Mr. DOLE. Mr. President, 79 years ago this week, on July 5, 1909, the Senate unanimously approved a constitutional amendment that has had an impact on this Nation's economic and social development far exceeding the expectations of those who voted for it. In February 1913, the 30-word resolution became the Constitution's 16th amendment. The amendment states simply, "the Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

The Nation's first income tax—a 3-percent levy on incomes above $800—had been passed as an emergency measure during the first year of the Civil War. Its rates were increased during the war until incomes between $600 and $5,000 were taxed at 5 percent and those over $5,000 at 10 percent. The tax was abolished in 1872. In 1894, Congress added a 2-percent tax on incomes over $2,000 to a tariff reduction measure to offset its anticipated lower revenues. A year later, the Supreme Court declared this provision unconstitutional, ruling that taxes on

personal property were direct taxes and, as provided in the Constitution, could only be levied by apportionment among the States.

In 1909, Members of Congress removed an income tax provision from a pending tariff bill out of concern that it too would be ruled unconstitutional. This prompted them to pass the 16th amendment. The Underwood Tariff Act of 1913 contained the first regular income tax under the new amendment. It set a 1-percent tax on incomes from $3,000 to $20,000 and, at the upper end, a 6-percent levy on incomes over $500,000. By 1920, this tax was contributing 10 times as much revenue as received from customs duties—the previous major source of national funds. Income taxes, however unpleasant, have been the prime means of funding America's domestic and defense programs.

RECESS

Mr. BYRD. Mr. President, I ask that the Senate stand in recess for 45 minutes.

Thereupon, at 9:59 a.m., the Senate recessed until 10:45 a.m., whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. SANFORD].

CONGRESSIONAL CALL TO CONSCIENCE VIGIL FOR SOVIET JEWS

Mr. COCHRAN. Mr. President, I rise today to comment on the condition of human rights in the Soviet Union, and to specifically bring to the attention of the Senate the refusenik case of Vladimir and Luba Meshkov.

On the surface, it appears that there have been positive steps toward glasnost in the Soviet Union. It is encouraging to note the release and emigration of Anatoly Shcharansky in 1986, the release of more than 100 political prisoners and the emigration of more than 8,000 Soviet Jews in 1987, and the emigration of over 3,000 thus far this year. These numbers are an improvement over those for the years 1982-86. Nonetheless, I feel this represents only a beginning in the quest for a solution to the human rights problems in the Soviet Union.

Vladimir Meshkov and his family first applied to emigrate in 1977, but they were hindered by Soviet officials in submitting the proper application forms. Subsequent to their request being denied, Vladimir was forced to leave his position as a mathematician at the Institute for Teachers. He is on the verge of losing his sight, and both his wife, Luba, and their daughter, Miriam, suffer from congenital heart disease. Vladimir and his wife are both unemployed.

As a result of their refusenik status, the Meshkovs are victims of KGB harassment, which hinders their community work, and tests their will. They are ever forbidden from receiving mail from abroad. Despite these hardships, the Meshkovs are active in bettering the condition of Moscow's Jewish community, initiating programs for Jewish women.

In 1985, Vladimir was granted permission to emigrate but felt that he should wait for his mother to receive permission as well. She has not yet been granted the necessary approval. Most recently, on April 11 of this year, the Meshkovs were again refused permission to emigrate. They must now wait another 6 months to file a new application and begin anew the complicated process.

Vladimir is a member of the "Poor Relative's Group," which is comprised of individuals who have been unable to receive a financial claims waiver from members of their family; without this waiver, they cannot receive permission to emigrate. The Soviet Government feels that one is financially responsible for their parents, children, and exspouses unless these "relatives" have signed this form. In their case, it is Luba's mother who refuses to sign their form. This is a requirement imposed by the Soviet Government to suppress emigration and it is an apparent violation of the Helsinki Agreement.

Since January 1, 1988, all Soviet Jews have been required to provide evidence of first-degree relatives abroad, in the form of an invitation or official affidavit, to become eligible to apply for emigration. This new requirement makes an estimated 90 percent of Soviet Jews ineligible to apply for permission to emigrate.

On April 21, while Secretary of State George Shultz was visiting Moscow for 2 days of arms control talks, he met with two dozen Jews and others who have been denied permission to emigrate. While Secretary Shultz was meeting with this group, other refuseniks known as the Thursday Group, comprised of "poor relatives," attempted to demonstrate on the steps of the Lenin Library in Moscow. Before they could reach their destination, they were detained by plainclothes police. Among these demonstrators was refusenik Vladimir Meshkov, who was severely beaten.

Mr. President, Vladimir Meshkov and his family are not unique, but their story illustrates the serious problems that remain in the Soviet Union. I know that the administration and Congress are both concerned with the harsh treatment of Soviet Jews in the U.S.S.R. We should continue to seek effective means to influence improvements and reform of Soviet policy in these matters of basic human rights.

TRIBUTES TO H.F. "COTTON" ROBINSON, CHANCELLOR EMERITUS, WESTERN CAROLINA UNIVERSITY

Mr. SANFORD. Mr. President, one of North Carolina's truly outstanding citizens, H.R. Robinson, died unexpectedly this week. I ask consent to place in the RECORD comments about his life and outstanding contributions. My comments are followed by those of Liston Ramsey, speaker of the house, North Carolina General Assembly, Chancellor Myron L. Coulter of Western Carolina University, and Dan Robinson.

There being no objection, the comments were ordered to be printed in the RECORD, as follows:

Senator SANFORD. Cotton Robinson always had a good story to tell. He was so full of the zest for life, of humor and good nature, of interesting experiences.

I was fascinated when he told me, from his experience as a research scientist, of his quest for the original Indian maize, corn that is. He traced the strain back like a detective retracing the steps of a jewel thief, like a biographer tracing his family roots. He found it, too. He put the family tree together, right back to the Adam and Eve of the maize family.

That was not the most significant research of this scholar and scientist, but it made a point that illuminates Cotton Robinson's entire life.

What good was it to isolate the original Indian corn germ? Interesting, yes. A scientific achievement, yes. A great contribution to genetics and seed technology, yes. But the difference was that Cotton Robinson then put together a package for the Cherokee Indians to plant and nurture, to advertise and market this ancestral strain. That was Cotton Robinson. He ever asked the question, "How do we make life better for all people?"

We have all been tremendously impressed with his record at Cullowee. He took over the direction of a school yet to reach its full potential. He took it to its capacity, and created a potential for even greater accomplishments in the future.

Cotton Robinson made Western Carolina University an unparalleled force for the renaissance of Western North Carolina. In education, in art, in science, in human development, in community enrichment, in regional achievement, Western North Carolina has never known such revival of spirit and substance. Cotton Robinson was the architect and the builder. I have been privileged to know the great leaders of North Carolina for a half century. Cotton Robinson stands with the truly magnificent personalities in the history of the State, especially the mountains of North Carolina, the equal of any, second to none, with, I am sure he would likely say, the possible exception of Chief Drowning Bear who went to the White House and stood up to President Andrew Jackson. It is my considered judgment, long before this day, that no one has done more to help Western North Carolina arise from its geographical isolation and compete with the world in providing new challenges for its children, than Chancellor H.F. Robinson. His life made a tremendous, lasting difference for a tremendous number of people.

It was in 1974 when he returned to his native North Carolina mountains as Chancellor that his decades of achievement attained fulfillment. He had returned to the problems and opportunities he had known since childhood. These his people, descendants of the pioneers, the adventurous stock of America, were locked in by forces of modernization that had not been conquered. It troubled him that young people had to leave the hills of their birth in order to seek their fortunes. He had been required to leave.

Education was the hope of the individual and economic structure was the hope of the region. Western Carolina University was the engine of hope. Cotton Robinson was the mighty engineer. He led his region to new achievements in jobs, transportation, health care, community enrichment, and pride.

Cotton Robinson's sphere was the world. He spent his life in universities recognized as a significant scientist and scholar, and in summary, he embraced food supply for the world as his academic field. There were no short horizons for Cotton Robinson. He traveled the world all of his career, and he affiliated his Western Carolina University with universities throughout the world, Hunan, Napal, Mexico, Oman, Equador, and tied his University to projects in Zambia, Zaire, Indonesia, Swaziland, Columbia, Haiti, Senegal, and the Dominican Republic, not to exhaust the list. He just returned from a trip to Africa last week.

Closer to home, he served his people through the Western North Carolina Development Association, the North Carolina Rural Economic Development Center, the Mountain Aquaculture Center (we're talking about mountain trout), the North Carolina School of Science and Math, the Appalachian Foundation, the Cherokee Historical Association, the Tennessee Valley Association, the Jackson County Committee of 100, the Board of the Ashville Area Chamber of Commerce, the I-26 Corridor Association, and on and on.

In thinking about a biblical allegory, I fell short. Cotton Robinson, this giant of the mountains, this dedicated man of good will, did not lead his people to the promised land. He brought them new promises in their promised land. That is his monument.

Speaker RAMSEY. They say the world is divided into three classes of people: those who watch things happen; those who make things happen; and those who wonder what happened.

Dr. H. F. Robinson belonged to that class of people who make things happen.

He did not make them happen for his own benefit. He made them happen for the people of his beloved mountains, especially Western Carolina University.

Part of what he accomplished as Chancellor of Western is visible to the eye. The physical plant of this University more than doubled, and the entire skyline changed, during his 10 years here.

Part of this handiwork is not visible to the eye. Under his guidance, Western improved the quality of its academic programs, expanded its outreach to the people of the West, and rose to a prominent place among North Carolina institutions of higher learning.

I had the honor of working closely with him on numerous projects of benefit to western North Carolina and to this state as a whole. He will be sorely missed.

Cotton Robinson was a man of tremendous intellect, but he was also a very practical man. He knew where he needed to go and how to get there. When he saw a job that needed doing, he did it promptly, he did it swiftly, he did it cleanly, he did it well.

His interest and concern extended far beyond this campus to every cove and hollow, every nook and cranny, of western North Carolina.

He used his boundless energy to advance not only our educational life but our economic, cultural and social life as well.

Fortunately for us, his passing cannot take from us the inspiration of his fine example and service. His imprint will endure, and his influence will continue for generations to come.

A Cotton Robinson does not come along every day, and I doubt that we shall see his likes again.

In reflecting on his life, these words of the poet come to mind:

"No person was ever honored for what he received;
"Honor was the reward for what he gave.
"Great has been his effort.
"Greatness is his reward."

Chancellor MYRON L. COULTER. There are many junctures in a dedicated leader's life when he must privately look back and ask what he has accomplished for his fellow man. He must ask what he has done to promote the general welfare of those with whom he lives, works, and plays. He must wonder whether his life has made a difference.

While we know that our good friend and respected colleague, Cotton, must have asked those questions of himself many times, they are now ours to answer in ways which he could not. He has indeed led a distinguished and significant life. He has made a difference in the lives of all of us here today, whether we be educators, legislators, professional leaders, family members, or friends and acquaintances. We all know of Cotton's passion for work and accomplishment; for making his presence felt wherever he was; for speaking out with total commitment on a myriad of issues and projects.

Cotton Robinson cared, and he sensed deeply, as anyone of total commitment must. At times his caring was expressed with a somewhat brash and insistent personality. But always beneath the exterior was an inner core of compassion, and a compulsion to build ideas; to build a university; to build a more stable economy for the people of the western mountains; to purify and preserve the environment; to lay a foundation for people whom he would never know. His satisfaction had to be the opportunity to look back and say, "This was the right thing to do," even though it may not have been popular at the time. His accomplished projects were often reported with a wry smile and the simple comment, "I knew we could get this one done."

He was indeed a man with a plan, a man for all seasons, a man for all nations. The ripples of his life will touch all shores, and the vibrations of his energy will long cause a stirring in all who knew him well.

As I have thought of Cotton's life, I am reminded of a favorite stanza from our poet Laureate, Robert Frost's poem, "Stopping by woods on a snowy evening." Frost writes:

"The woods are lovely, dark and deep,
but I have promises to keep,
and miles to go before I sleep."

Our friend Cotton has kept his promises and crossed his miles.

DAN ROBINSON. Hundreds of people, if given the opportunity, would stand and make comments on what Cotton Robinson's life has meant to them. I will try and incorporate some of their feelings in my remarks.

Dr. William Friday, former President of the University of North Carolina, sends the following from Salzburg, Austria:

"My lifelong friend Cotton Robinson served his state faithfully and remarkably well for over four decades. His first and highest devotion next to his family and his church was Western Carolina University and the citizens of the mountains he loved so much. Look at the campus today and see how enormously successful he was as her chancellor. The less fortunate, the poorly educated, and the needy have lost a strong friend. The farm people will greatly miss his advocacy on their behalf and all North Carolinians, have lost a noble servant. His death closes an exceptional career of public service that reached around the world, but his great and good works will live on to serve this state and country. We shall greatly miss his inspiring life."

Mr. Doug Reed, Director of Public Information, Western Carolina University, sends his from Montana:

"We knew Dr. Robinson as a man who lived life boldly. He painted large visions for himself, for his fellow man, for his universities, for his native region, and had the skill and tenacity to make them realities. He challenged all who knew him to strive without ceasing, to achieve and then achieve again. His own accomplishments were global and he was, in truth, a world citizen.

"But on the intimate, personal level, he gave definition to the world, 'friend.' To those to whom he gave friendship, he gave it without reservation, without question, and without limit. There was, in him, a gentle kindness that was manifested over many years, in many unseen ways; and it was the great motivation of his life to do for others."

Cotton's total commitment to the needs of Western Carolina University, western North Carolina and the many individuals who came to him for advice and help is unsurpassed. Possibly just as important was Cotton's ability to achieve what seemed to be the impossible. He received personal pleasure from being of service to others. He takes his place among other courageous dedicated public servants who placed the needs of others above self preservation.

Cotton meant many things to different people. He was "Cotton" to Katherine, members of his family and close friends. All of these knew him as a person capable of a warm, caring relationship. He was "Daddy" to Karen and Josie, his two beloved daughters.—"Dr. Robinson" to some, a person they held in high esteem, gained through a personal relationship or by reputation—"Chancellor Robinson" to those who knew and remembered him primarily as the chief administrator of Western Carolina University. Many of us remember him as a good friend to hunt and fish with, to share concerns, get advice and good counsel and not to be forgotten are those who knew him as a dedicated, tireless worker to elect well qualified public servants.

Regardless of the name we knew him by, in one way he meant the same thing to all of us—a friend, available to all who needed him, someone who could get things done.

A thought provided by a friend and long time WCU employee, "Dr. Robinson was a strong administrator. He wanted to see progress and was forceful in carrying out ideas that would bring positive change. He respected differences of opinion and would not hold a grudge; he was willing to forgive

a mistake or shortcoming in another. He was fair and compassionate. He was a motivator who led by example. He brought out the best in the people who worked with him by letting them know that good service would be rewarded." Another close acquaintaince said, "He was the best friend I ever had in the world.

Cotton took great pride in his family. His dependence on Katherine was always evident and she was the leveling force in his life. For those who knew him only as a hard driving administrator who sometimes wanted everything done "yesterday," would have marveled at Katherine's ability to help him keep things in perspective.

He spoke with pride and love of Karen and Josie and their families. And oh, those grandchildren. What Ben and Jay had accomplished and were doing as an important part of his life and you soon realized that he and Madge had a special relationship.

He even found room for his cousins and their families, a sister-in-law and her family in that inner circle.

Many thought Cotton had no weakness, and this appeared to be so—but he did—he could never say no to a request for help from the many who asked.

There may be those who might say: "He should have taken it easy, not pushed himself so hard. It was time for him to slow down." But I would say to you that the cruelest thing that could ever have happened to Cotton Robinson would have been for him to have grown old, become disabled and not in the main stream. As we all know, Cotton was a first teamer and often the captain of the team. Having to be anything less would have been unacceptable.

Life was good and rewarding to Dr. H. F. "Cotton" Robinson and he didn't waste his blessings. He lived a full and fruitful life.

HIGH-YIELD BONDS

Mr. SHELBY. Mr. President, high-yield bonds have provided hundreds of established companies and, more importantly, dozens of entrepreneurs with the financing necessary to expand and provide thousands of jobs. I ask unanimous consent to enter into the RECORD a recent article in the New York Times which discusses the positive benefits produced by high-yield bonds.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, June 19, 1988]

FINANCING THE FUTURE—DON'T WRITE OFF JUNK BONDS

(By Glenn Yago)

"Junk bonds"—is there an empirical basis for the nasty-name-calling about the high-yield financing that raised more than $150 billion for growth companies over the past decade? Can investment-grade companies that issue "non-junk bonds" still be considered "quality" if they lay off workers and lose markets to foreign competitors? Does it really make any sense to consider non-investment grade companies as the "junk" of Corporate America?

To investigate the operations and consequences of these capital market instruments apart from the rhetorical bias, my colleagues and I examined 755 companies that issued high-yield debt from 1980 through 1986. We examined average annual changes in employment, productivity, sales and capital investment based on the reporting year of the issuing company. The evidence we found counters the securities pundits' mantra about junk bonds. In each key performance measure, high-yield firms grew faster than industry in general.

High-yield companies increased employment at an average annual rate of 6.7 percent, compared with 1.4 percent for industry. High-yield companies evidenced a greater capacity than American industry over all to create new jobs, retain old ones or successfully manage employment reductions in industries that were shrinking. In industries that were growing, like health, education, and leisure services, high-yield companies like Charter Medical, Manor Care, National Education Corporation, and Kinder-Care grew faster than the average.

In declining sectors like communications and construction, high-yield companies also grew. For example, while companies like the American Telephone and Telegraph Company were laying off thousands of workers, companies like M.C.I. McCaw Cellular Communications, and Tele-Communications were redefining the communications industry through innovation. In shrinking sectors, high-yield companies contracted at a slower rate.

Using the Bureau of Labor Statistics productivity index, our analysis showed that most industries had a positive correlation between the use of high-yield securities and productivity increases. To assess performance across a broader range of industries, we used sales-per-employee as a proxy for productivity and found that companies issuing junk bonds outperformed industry in general.

Among those companies reporting sales data, high-yield companies showed faster annual sales growth than industry in general—9.38 percent versus 6.42 percent. Manufacturing sales increases among junk bond issuers were nearly twice that of all manufacturing companies. Contrary to charges that junk bond users are just "paper entrepreneurs" shuffling assets and expanding their debt, these companies increased their total invested capital at an average annual rate higher than industry in general.

Beyond corporate capital structure, the evidence of capital spending suggests that junk bonds have financed a good deal of American reindustrialization. New capital expenditures for property, plant and equipment grew more than twice as fast among the junk bond issuers than they did for industry in general—10.6 percent versus 3.8 percent. Within manufacturing, the rate of capital spending among junk bond issuers was over four times higher than for the whole manufacturing sector. To examine this important finding more closely, we tracked members of the high-yield junk bond class of 1983 for three years before and after their new capital injection. Those manufacturing firms that had disinvested at a rate of 4.8 percent from 1980–83 spent nearly 18 percent more on new capital investment after they issued their high-yield junk bonds. For the same period, overall manufacturing investment was flat.

High-yield companies like the Stone Container Corporation and the Quanex Corporation were re-opening and modernizing factories. Utilicorp United. Doskocil, and Town and Country wer transforming from low-margin, low-market share to high-margin, high-market share producers. Industrial categories were redefined—Hovnanian Enterprises Inc. moved from real estate development to construction and finance—new product cycles were begun and advanced technologies were applied.

How much we invest in our future largely depends on how much capital is available and how it is allocated. Junk bonds have become a critical part of financing the future for companies struggling to move beyond a muddled mainstream of entrenched managers and failed strategies. The success of earlier structural transitions in the economy has been a function of how flexible the capital markets became in extending access to credit to excluded businesses.

Income and social mobility have accompanied each era of expanding access to capital. Credit has been a mechanism whereby Americans have built economic equity in their homes and businesses and thereby achieved social equity as well. In West Germany, France, and Britain, where capital market have been more rigid and liquidity markets constrained, economic transitions have been more troubled and class structures less open.

There has always been resistance to making capital more accessible. Six states have imposed investment restrictions on savings institutions and insurance companies investing in high-yield junk bonds. Congressional committees are considering future regulation without much investigation in a witch-hunt atmosphere.

In the context, it is important to remember that credit has been an important ingredient in the social and income mobility that has been the economic engine behind America's political vision of democracy. As Nelson Peltz, Chairman of Triangle Industries Inc.—a junk bond issuer that renovated the American container industry—said recently about the importance investment capital. "If you don't inherit it, you have to borrow it." No American company inherits growth or can keep it alive without new financing. The high-yield market empowers companies to pursue growth strategies through affordable fixed rate financing. By financing the future, junk securities produce companies that may yet allow America to recover its economic leadership.

WE NEED THE SUPPLEMENTAL APPROPRIATION BILL NOW!

Mr. RIEGLE. Mr. President, I rise today to alert the Senate to a serious shortfall affecting thousands of workers which will soon mean a loss of all benefits in every State for the Trade Readjustment Assistance Program.

The program, which provides extended unemployment benefits to workers who have lost their jobs due to foreign imports, is especially important in view of the lack of other benefits available to these workers.

Under TRA, workers may receive an additional 26 weeks of extended unemployment benefits, once their regular State benefits are exhausted. An additional 26 weeks of benefits are available to workers enrolled in approved training programs requiring additional time.

The regular unemployment insurance system currently pays only 26 weeks of benefits, since the extended benefits program is functionally inop-

erative, due to a qualification level which only one State currently meets. On March 16, 1988, I introduced S. 2175 to address the ineffectiveness of this program by making the triggering mechanism more reflective of those who are supposed to receive the benefits.

As of today, the State of Michigan is no longer paying trade readjustment assistance benefits to 5,000 workers who were receiving these funds.

The Department of Labor requested a supplemental appropriation for trade readjustment assistance in the amount of $49 million on June 22. That request is contained in a supplemental appropriation bill which is under consideration in the House Appropriations Committee. It doesn't appear to be moving very quickly, however.

Today, I initiated a letter to Chairman JAMIE WHITTEN, urging him to expedite these funds. It was cosigned by Senators DANFORTH, HEINZ, LEVIN, SIMON, DIXON, and DURENBERGER.

The Labor Department estimates that all funds for the program will be exhausted by the end of this month. This will mean a loss of funds to 25,917 people across the country, 5,000 of whom are in the State of Michigan and 9,713 in region V, which includes Michigan, Illinois, Wisconsin, Ohio, Indiana, and Minnesota.

I need not remind my colleagues of the tremendous human toll in addition to the economic consequences of our ever-worsening trade deficit. These workers are the ones who are directly affected, and this program is the safety net which was established to assist them.

Today, the White House was celebrating the lower unemployment rate for the entire country—5.3 percent. That is lower than last month. But in States like Michigan, which have taken one of the largest hits over the past several years because of our unfair and lopsided trade situation, the numbers are much higher. In fact, my State's jobless rate increased in June to 6.6 percent—300,000 people out of work, which is 7,000 more than last month, and that is a very conservative figure, since the data doesn't include everyone.

This is a critical situation which must be addressed immediately. I urge the House Appropriations Committee to take action to restore benefits to those who can least afford to lose them.

I ask unanimous consent that a copy of the letter which was sent to Chairman WHITTEN be included in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, July 8, 1988.

Hon. JAMIE WHITTEN,
Chairman, Appropriations Committee, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: It has come to our attention that the necessary funds to meet mandatory Trade Readjustment Assistance payments have been exhausted in States in Regions V and VII of the Department of Labor.

In Michigan, over 5,000 workers will be without benefits next Monday, and, according to the Department of Labor, all States will be unable to pay benefits to thousand of workers by the end of this month.

The Department of Labor requested a Supplemental Appropriation of $49 million for this program on June 22, to meet the shortfall.

It is our understanding that the House Appropriations Committee is currently considering a Supplemental Appropriation which includes the necesary funds. We urge you to act immediately on this legislation so that all workers who are entitled to these benefits can continue to receive them without interruption. Should there be a delay, it is imperative that the benefits be paid retroactively.

Thank you for your consideration of this urgent request.

Sincerely,

DONALD W. RIEGLE, Jr.
JOHN HEINZ.
JOHN C. DANFORTH.
CARL LEVIN.
PAUL SIMON.
DAVE DURENBERGER.
ALAN J. DIXON.

HOSTAGES IN LEBANON AND EVENTS IN THE PERSIAN GULF

Mr. MOYNIHAN. Mr. President, the Nation's attention has been drawn recently to the Persian Gulf. Debate has raged anew over the administration's policies there—what those policies are and what they should be. Part of this discussion has been a consideration of our Nation's relationship with Iran.

As my colleagues and the executive branch think about this relationship, none must forget that the Government of Iran holds influence over groups in Beirut holding nine American citizens hostage. Terry Anderson is the longest held of these men; he was kidnaped on March 16, 1985.

Some have called for the United States Government to pay reparations to Iran in compensation for the lives of those killed in last Sunday's tragedy. In similar cases, doing so would be the responsible thing one civilized nation does for another when civilians are accidentally killed. It is a simple matter of regard for human life.

But to do so in this case would be a mistake. Iran has shown no small degree of callousness to human life. It has repeatedly refused pleas to free the American hostages in Beirut, even as many of these hostages have remained capitve for years. Iran has the power to win these hostages' release, but it has elected instead to let them languish.

Until these hostages are freed, Iran has shirked its duty. It has not earned the right to be treated as a member of the community of nations. Any compensation would be unearned.

I should add an encouraging note. Reports from the region last week said the Speaker of the Iranian Majlis, Hashemi Rafsanjani, stated it would be wrong to execute the hostages now in retribution for the downing of flight 655. To say the least. Perhaps there is a glimmer of hope.

Let us hope that the Iranians' desire for compensation leads them to realize that more is to be gained from acting responsibly than acting as they have.

SANFORD ON BYRD

Mr. SANFORD. Mr. President, when I arrived in the Senate I saw the majority leader, Senator ROBERT C. BYRD, as the paradigm for the Senate. It was one thing to have known some of his distinguished predecessors from outside the Senate, but it was quite another to experience close up the leader's skills, decorum, and knowledge. Beyond that competence, I doubt that there has ever been anyone with greater respect for the Senate as an institution, greater love for its Members and traditions, greater jealousy for its reputation, or greater pride in its accomplishments.

Nor can I imagine anyone who has worked with more devotion to continue and enlarge the highest purposes of the Senate. It is widely known that he has a better command of the rules than any other Member has ever had. I do not doubt that; but, of greater importance, he knows the purposes of the U.S. Senate. Rules are to accomplish purposes, and if the purposes are not worthy, the rules are without value. Senator BYRD knows this distinction, and brings to the leadership a clear sense of what it is we should try to accomplish for the Nation and the world. He knows when to support the President, and when to draw in the reins of restraint as intended by the Constitution.

It was he who attempted to make campaign contributions more rational. It was he who insisted we get back to the job of building highways and water and sewer facilities. It was he who kept a strong hand and a clear head on the Iran-Contra affair. It was he who called the President's hand on the budget.

The ultimate test for the Senate is the good of our Nation and her people. It is not a forum to celebrate its reputation as the most exclusive deliberative body in the world. It is the leader's place to see to it that the Senate plays a leading, sometimes crucial, part in providing the defense of this Nation, in resisting injustices in our system, in promoting jobs and econom-

ic health, in expressing concern for children in poverty and for older people in illness, in a dedication to education, science and research, or, in short, in remaining faithful to a national agenda. Senator BYRD, as majority leader, as well as when he was minority leader, for all of his love of the Senate, its lore, and its traditions, never lost sight of these primary purposes: the setting of national priorities in the framework of our constitutional government.

Since my introduction to the manners and mores of this body, Senator BYRD's stature has grown daily in my estimation. But there is more to it than respecting the leader and admiring his abilities. It has been a source of satisfaction to me to be able to count him as a friend in whom I have full confidence and trust. While his personal qualities, and his devotion to the Senate, and his dedication to the Nation, are largely responsible for that, in a way it was to be expected from a man who had the unqualified good judgment to be born in North Carolina.

TONY BEVINETTO REMEMBERED

Mr. SIMPSON. Mr. President, I thank the majority leader, as always, for his courtesies and also the minority leader for his. My remarks will be brief. Sometimes we do these things in a perfunctory manner, without all the care and attention we should give. I do not want to do that. I just want to speak for a few moments about a friend, a longtime friend of mine, Pietro Antonio Bevinetto—Tony to all who knew him, who succumbed to cancer at his home after a very long and very tough and gut-hard-fought battle.

It is not really possible for me to let this sad moment slip by without offering some reflections on a unique friend of nearly a lifetime, my pal of nearly 40 years who was known to many of us here in the Senate as he worked here among us.

He began his totally loyal 12 years of service to the Senate as a legislative staff member of my predecessor, Cliff Hansen, of Wyoming, who left such a great heritage for me and taught me so much and served as my counsel when I came here and before. Tony was then "on loan" from the National Park Service where he served as Assistant Superintendent of Grand Teton National Park. Tony brought with him not only his remarkable technical expertise about public lands and national parks, but he brought a distinctive and unique understanding of the out of doors; the creation; nature. Very swiftly, Tony became an institution within our Senate institution. He became a member of the Senate Energy and National Resource Committee. While he weighed and balanced and analyzed the efforts of the experts—and there are sure a lot of them in this town, and also authorities, there are a lot of them, too—there was never any question. He was the authority. He was the expert.

He drew from his two bachelor of science degrees from the University of Wyoming, from his experience as an advertising director and newspaper reporter, from his time as the assistant director of the Wyoming Travel Commission, from his various experiences in the Air Force, and his true love of the land as he formed his opinions on public lands management. Wyoming people loved him. He was always the guy to go to when it came time to cut through the hype and the hoorah and the exaggeration of the process of public debate. When it came to the management of parks, forests, wilderness, and rivers, Tony's word was "the word", and we all knew that.

Earlier today, our friend, Senator JIM MCCLURE, the ranking Republican on the Energy Committee, observed that Tony did not just know park legislation; he loved parks. He was not just an advocate of wilderness, he understood its importance. He did not just acknowledge the importance of timber harvest and grazing to our Western States, he felt for those people and he considered himself one of them.

Senator MCCLURE said he believed that Tony Bevinetto had a special human side. Indeed. That is one so often lacking in this city. How true that is, how extraordinarily true that is. I knew it so well because my time with Tony goes back further than anyone here in this Chamber.

Of course, he had a unique relationship with MALCOLM WALLOP, our other colleague, my dear friend from Wyoming, who knew him so well and worked with him so long.

I came to know Tony during our time together at the University of Wyoming. I assure you that we were a very odd couple, an odd combination at one of the early local watering holes in Laramie, WY, "The Buff," it was called. Tony at 5-foot-3 and me at 6-foot-7, each of us weighed in above 200 pounds—260 for me in those days when I had hair and weighed 260 and thought beer was food. I told you about those days.

I had a real girth. I bought my clothes at the "husky" rack in clothing stores. So when Tony and I would see each other, it was always a source of great amusement. He weighed about 230 at 5-foot-3. It was great amusement when Tony would wheel around—we always knew where we were in relation to each other standing there—and he would wheel around with his eyeballs at my midsection and say, "Where is AL?" I would scan the room at a vantage point high above Tony's head and say, "Has anyone here seen Tony?"

Everyone had a good laugh as one of us would belly up and the other strained to peer over.

He brought a great deal of laughter to life, just as he did here. Those who know him know of what I speak.

So I followed Tony throughout his career, and he watched mine. I sought his counsel, his shared spirit, his optimism, his support, his celebration of life. He was truly a rainbow of life.

When he worked in the Grand Teton National Park as assistant superintendent, someone asked him to describe his job. He said, "My job is trying to fluff up the moose because park visitors don't like scrawny and ugly animals."

That was Tony. Through his remarkable native intelligence and craft, he brought great joy, love, and fellowship wherever he went. He was fair, tough, and wise with a huge capacity for human loving and caring, as big as his frame, as huge as his frame.

The many people who were honored to number Tony among their friends knew of this ability to love and be loved. That certainly is the essence of existence and requires real strength and grace.

So those are qualities and strengths that Tony Bevinetto leaves behind, the ones I shall forever draw fondly to my mind when somebody says, "Where is Tony?"

We know where he is: With his Creator who created the very Earth that he loved and spent a lifetime of stewardship over.

So my deep sympathy goes to Tony's supporting and loving wife, Elsie, a great lady herself, his two fine daughters, Kirsten and Libby, effervescent and dear ladies, too. I shall join them in missing Tony's voice, his easy laugh, his bright and curious and all-encompassing eyes, and the smile you could see a mile.

So let us instead of mourning, which is surely what I would prefer to want to do from my heart, I shall think of the fact we must not do that; we should celebrate a beautiful life lived. Let us try to do that.

I thank the Chair.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, has morning business been closed?

The PRESIDING OFFICER. Morning business has not yet been concluded.

Mr. BYRD. Mr. President, I ask that morning business be closed.

The PRESIDING OFFICER. Morning business is closed.

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, FISCAL YEAR 1989

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (H.R. 4776) making appropriations for the government of the District of Columbia and for other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1989, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Warner Amendment No. 2536, to encourage the District of Columbia to adopt and implement a preference system that does not preclude the hiring of noncity residents by May 1, 1989.

A motion was entered to table the motion to appeal the ruling of the Chair on a point of order under rule XVI, paragraph 4, against Warner Amendment No. 2536, listed above.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask unanimous consent to proceed for 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, under the circumstances now obtaining, the motion to table the appeal of the ruling of the Chair is before the Senate; is that not the question before the Senate?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. There is no debate on that.

The PRESIDING OFFICER. That is correct.

RECESS

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 10 minutes.

There being no objection, the Senate, at 10:47 a.m., recessed until 10:57 a.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. SANFORD].

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the proceedings under the quorum call be suspended.

The PRESIDING OFFICER (Mr. BREAUX). Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I ask unanimous consent to be able to speak for not to exceed 7 minutes.

Mr. BYRD. I have no objection. How must time does the Senator want?

Mr. KENNEDY. I said 6 or 7 minutes. Not to exceed 7 minutes.

The PRESIDING OFFICER. Is there objection to the request?

Mr. BYRD. I have no objection to that. Mr. President, I should alert other Senators though that when the Senator finishes speaking, it is my plan, unless I know something that I do not know now, to let the Senate proceed to a vote on the tabling motion.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Massachusetts is recognized.

DISTRICT OF COLUMBIA GOVERNMENT RESIDENT REQUIREMENT LAW

Mr. KENNEDY. Mr. President, I strongly oppose the House language repealing the D.C. government's requirement that D.C. employees must be residents of the District, and I urge the conferees to reject it.

The issue is home rule, not residency—and the residency tail should not be permitted to wag the home rule dog.

The Constitution does give Congress the last word over the District of Columbia. But Congress wisely gave home rule to the District of Columbia in the 1970's.

We should not be interfering in cases such as this, which are preeminently issues to which the principle of home rule does and should apply.

Too often, Congress is tempted to ignore the home rule charter and try to run the District, against the will of the 600,000 D.C. citizens who have never been adequately represented in their Federal Government, and who are shabbily treated as second class citizens by Congress because they choose to live in the Nation's Capital and are therefore denied representation in the House and Senate.

Today, the plantation mentality of Congress against the District is in full cry. We are being asked to override a valid D.C. law and permit employees of the D.C. government to reside outside the District.

The opponents of the residency rule are attempting to make their case in the Senate—but in fact they are making the case for D.C. statehood and D.C. representation in Congress.

I ask my colleagues, "Why are we even debating—let alone deciding—this issue?" There is a recognized legal local District of Columbia government in place. It is functioning—and, I might add, it is functioning well. The D.C. government is quite capable of deciding the residency issue—it has already done so, and Congress should let its decision stand.

All of us in Congress who live, drive, work or do anything else in the District are subject to its laws. All of us respect those laws, just as we do the laws of our own States.

But now we are being asked to nullify a D.C. law specifically enacted as part of the city's merit personnel statute, which was enacted in 1978 and became effective in 1980. In fact when Congress approved the D.C. home rule charter in 1974, we specifically considered the residency issue, and we clearly indicated then that it was an appropriate issue to be decided under home rule.

There is nothing extraordinary about the D.C. residence restrictions. Many American cities have such laws. As I understand it, the Appropriations Committee has surveyed 42 cities with populations over 250,000 that have laws restricting the residence of public employees. Two-thirds of such cities have laws that are more restrictive than D.C.'s requirements.

In fact, the D.C. law is relatively mild compared to most. It applies only to D.C. employees hired after 1980. It gives 180 days to out-of-city hires to move into the District. In Boston, you do not get that grace period; you have to reside in the city the day you take the job.

The D.C. law is also a significant bulwark of the city's tax base. D.C. government employees living in the District pay millions of dollars a year to the city in local income taxes—but workers living outside the city pay nothing, even though they freeload heavily on the city's many services.

The police and firefighter aspect of this issue is a red herring. Jurisdictions up and down the east coast are all having a difficult time recruiting high caliber personnel. This situation is not unique to the District, and it is wrong for Congress to misuse it as an excuse for bashing D.C. home rule.

Why are we doing this to the District of Columbia, when we would not be caught dead doing it to cities in our own States? You could count on an all-out filibuster by Senator KERRY and myself if the Senate tried to do this to Boston.

Would the Senators from North Carolina vote to do this to Charlotte?

Would the Senators from Mississippi vote to do this to Jackson?

Would the Senators from Michigan vote to do this to Detroit?

Would the Senators from Illinois vote to do this to Chicago?

Would the Senators from Missouri vote to do this to St. Louis?

Would the Senators from Ohio vote to do this to Cincinnati?

Would the Senators from Pennsylvania vote to do this to Pittsburgh?

Would the Senators from Indiana vote to do this to Indianapolis?

Would the Senators from any other State vote to do this to many other cities in the Nation that have residence restrictions for public employees?

Of course they would not—and they should not do it to the District of Columbia either.

The appropriate place for this issue to be decided is in the D.C. government. The elected representatives of the people of the District of Columbia understand our concerns, and they will take them into account, along with all the other relevant factors affecting the residency issue.

I am sure that whatever decision the District of Columbia makes will be a better decision than we can make here on the Senate floor by substituting the imperial rule of Congress for the democratic will—with a small "d"—of the elected representatives of the people of the District of Columbia.

I urge my colleagues in the Senate to reaffirm home rule for the District of Columbia, to reject this unwise proposal to let the D.C. government work out its own solution to this preeminently local issue, and to stop this ridiculous and demeaning practice of treating the District of Columbia as America's last colony.

I ask unanimous consent to have printed in the RECORD certain additional materials.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, July 6, 1988]

THE UNASKED QUESTION ABOUT THE RESIDENCY RULE

(By William Raspberry)

With the debate over the city's residency law already involving questions of union turf, congressional intrusion, racial fairness, local revenues and the sanctity of home rule, it may be rude to introduce yet another question.

Well, let me be rude enough to pose the one question that appears to be missing in the raging debate over the requirement that city employees hired after 1980 must live in the District of Columbia: Does the city need it?

That isn't to say the other questions aren't valid. Surely Congress could find other ways to amuse itself than by trying to rewrite local personnel policies. Surely the firefighters' and police' unions have interests in the debate that go beyond mere philosophy. Surely the existing law has racial implications, given the fact that the mostly black District of Columbia is surrounded by mostly white suburbs. And surely, given the congressional veto of a commuter tax on D.C. workers, the existing residency rule helps the city's tax base.

Still, it's worth asking: Does the city need it?

If it's a question of policy-making jobs, the answer is yes. It doesn't make sense to have residents of Virginia and Maryland making local policy decisions that affect the lives, health and safety of D.C. residents. The chief of the personnel office or the person who heads the motor vehicles agency, like local elected officials, ought to have a resident's stake in the policies he creates.

But when it comes to the clerk who files your job application, or the typist who completes your license form, what earthly difference does it make which side of the District line he calls home?

Well, the truth is that the debate, while cast in general philosophical terms, is not about clerks and typists but about police officers and firefighters. And the questions that drive the argument have less to do with tax revenues and job development than with race:

Why shouldn't blacks, who finally are in a position of control, do to whites what whites have always done to blacks when *they* are in power?

Why shouldn't blacks acknowledge their incompetence and let white people make things work?

The questions aren't put that way, of course. The operative words are not black and white but their proxies: city and suburb. And when nonaffluent whites complain that they can't afford to live in the city, what they frequently mean is that they can't afford to live in the predominantly white parts of town and that they aren't about to move into Southeast.

Unfortunately, the proxies don't always work. A significant part of the outflow to the suburbs, particularly to Prince Georges County, comprises the movement of lower-middle-income blacks, who get better value for their housing dollars in the suburbs and in addition don't have to put their children in private schools.

In many cities that give hiring preference to city residents, housing is not the problem it is in rapidly gentrifying Washington. Baltimore, for instance, has a system of preference by executive order, which means that Mayor Kurt Schmoke has to sign an exception before the city can hire a nonresident. But as Schmoke noted in an interview this week, Baltimore has plenty of affordable housing; it's the suburbs that are expensive.

Some parties to the local debate have proposed to copy the Baltimore example. But what do you do with teachers or clerks who are hired as a result of residential preference but then move to the suburbs? Do you require their resignation, as happens with policy-making executives?

Schmoke says that if he were starting from scratch, he would hold a referendum on the question, leaving it to the voters to determine whether the advantages of a residency law outweigh the disadvantages of a restricted labor pool.

In other words, Schmoke would move directly to the critical question: Is the residency requirement—or some alternate system of preference—good for the city?

That's the question I'd like to see debated here. It would be a good deal easier to engage that debate if Congress would cease its interference and get out of the way.

[From the Washington Post, June 30, 1988]

RESIDENCY MADNESS

Not since the old dog-leash days—when Congress specified the legal allowable connection between the hand of a pet walker and the collar of the pet—has the District of Columbia been nagged and gagged as badly it was Tuesday in the House of Representatives. After a singularly disgusting show of force by D.C. Commissar-in-Congress Stanford Parris—complemented by a sweeping show of weakness on the part of local Emissary-to-the-House Walter Fauntroy and various petulant District government officials—the House voted overwhelmingly to gut this city's residency requirement for local government employees. Absent at almost all times was any rational discussion of or response to the situation. Unless the Senate rises to the occasion and moves to block the House's bully of the local government, the city officials who blew their side of it will be left mumbling in the dust.

The whole issue was distorted from the start by the refusal of key city officials and Mr. Fauntroy to come up with something other than stubborn insistence on a prohibition against the hiring of anybody who doesn't live inside the city limits. The sensible, defensible modification would have been—and still is—to approve legislation supported by D.C. Council members Hilda Mason, Carol Schwartz and others that would give hiring *preference* to D.C. residents. But Mayor Barry would rather rally his subordinates around the D.C. flag, defending the city government as employer of last resort—except when it has to resort to nonresidents for certain positions and then waives the whole thing to get them in.

Having been drubbed by the House, Mr. Barry reacted with an angry call for some sort of "advisory" referendum in the fall, which he no doubt assumes would support a total live-in rule over a preference. That might or might not be the outcome, but other than a feel-good exercise, what would it prove in the long run for relationships between the city and Congress—when everybody knows who holds all the cards?

As for Mr. Parris, his unsubtle characterization of the District as a collection of people who can't guarantee public safety or govern themselves without the expertise of his constituents sounded all to reminiscent of the tirades delivered by southern congressmen 25 years ago. Another reflection of those colonial days was the sight of police and firefighters' union officials going over the head of the city government to seek relief from Congress.

Congress shouldn't be overruling the city government's judgment on purely local matters, even when that judgment is bad. The residency law is too restrictive and should be changed—by the city government. But squaring off against Congress over a failing local policy is suicide.

Mr. KENNEDY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I will object for the moment to any other speeches, until this matter is worked out or we let the Senate work its will. I understand that there might be a chance still of working it out.

RECESS

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 15 minutes.

Thereupon, at 11:30 a.m., the Senate recessed until 11:45 a.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. BREAUX).

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I ask unanimous consent to proceed for 1 minute.

The PRESIDING OFFICER. The Chair recognizes the majorty leader.

Mr. BYRD. Mr. President, I thank all Senators who have been involved in the discussions in connection with the residency question. I think those discussions will prove to have been beneficial and hopefully if the request that I make is agreed to, the Senate will at least be well on its way toward resolving that particular problem and be ready for the next amendment.

So I thank Mr. WARNER, Ms. MIKULSKI, Mr. SARBANES, Mr. HARKIN, the Republican leader, and Mr. TRIBLE for the work that they have done. It has been time-consuming. The motions have gone up and down and up and down again.

But Shakespeare was right when he referred to that sleep which knits up the raveled sleeve of care.

I hope that once again we will prove that sleep did indeed help us all to knit up the raveled sleeve of confrontation.

Mr. WARNER. Mr. President, before the distinguished leader speaks we all should acknowledge the leadership that Mr. BYRD and Mr. DOLE gave in the final hours of this conference this morning to make it happen.

Mr. BYRD. Mr. President, I thank the distinguished Senator.

Mr. President, I ask unanimous consent that the pending motion to table be withdrawn, that the appeal that has been made by the distinguished Senator from Maryland [Mr. SARBANES], be withdrawn, that the point of order which was made by the distinguished Senator from Iowa [Mr. HARKIN], be withdrawn, and that the distinguished Senator from Virginia, et al, may be permitted to modify their amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Virginia is recognized.

AMENDMENT 2536, AS MODIFIED

(Purpose: To encourage the District of Columbia to adopt a preference system that does not preclude the hiring of noncity residents by May 1, 1989)

Mr. WARNER. Mr. President, I send to the desk a modification for the pending amendment and ask unanimous consent that it be so modified.

The PRESIDING OFFICER. The amendment is so modified.

The clerk will report the amendment of the Senator from Virginia.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for himself, Ms. MIKULSKI, Mr. TRIBLE, and Mr. SARBANES, proposes an amendment numbered 2536, as modified.

At the end of Title I, insert the following new section.

Section . (a) If by May 1, 1989, the District of Columbia government has not adopted, and implemented, no later than September 30, a preference system that does not preclude the hiring of noncity residents, none of the Federal funds provided or otherwise made available by this Act may be used to pay the salary or expenses of any officer, employee—

Mr. WARNER. Mr. President, I ask unanimous consent that the further reading of the amendment be dispensed with as the amendment remains the same.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, will the Senator yield?

Mr. WARNER. I yield to the Senator for the purpose of asking a question.

Mr. HARKIN. The Senator has the floor.

I would just point out to the clerk there was a mistype evidently in the reading of the amendment; the words "and implemented no later than September 30" should be "1989" not "1988."

Mr. WARNER. Mr. President, the Senator is correct and that is the way I thought it had been written.

I ask unanimous consent that the amendment now be further amended to reflect the date 1989.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

Without objection, it is so ordered.

The amendment, as further modified, is as follows:

At the end of Title I, insert the following new section:

Section . (a) If by May 1, 1989, the District of Columbia government has not adopted, and implemented no later than September 30, 1989, a preference system that does not preclude the hiring of noncity residents, none of the Federal funds provided or otherwise made available by this Act may be used to pay the salary or expenses of any officer, employee, or agent who is engaged in implementing, administering, or enforcing a District of Columbia residency requirement with respect to employees of the Government of the District of Columbia.

(b) After the date of enactment of this section, the District shall not dismiss any employees currently facing adverse job action for failure to comply with the residency requirement.

Mr. HARKIN. I thank the Senator from Virginia for his working with this Senator on reaching this compromise. It is acceptable.

Like any compromise that is made in any legislative body no one likes it entirely, but that is the art of compromise, that we all give up a little bit.

So in that spirit of accomplishment and compromise, the amendment is acceptable.

Again I thank both Senators from Virginia and both Senators from Maryland on working out this compromise, and I especially thank the distinguished leader also for his guidance and counsel in working out these difficult matters.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, we, likewise, extend our respect and appreciation to the Senator from Iowa. He stood tall and he stood strong for his firm beliefs. We, likewise, share those beliefs in the necessity to respect home rule and allow home rule to function in the manner in which Congress intended and, indeed, I think the spirit in which most of those in the District of Columbia are now trying to make home rule work.

This amendment is a reasonable compromise.

I thank my colleagues from Maryland. I thank my distinguished colleague from Virginia. Again, we respect the Senator from Iowa's willingness to accept this compromise.

Mr. REID. Mr. President, the amendment before this body does not pique the interest of only Senators from Maryland and Virginia.

This Senator, a member of the D.C. Subcommittee on Appropriations, is also interested—as I am certain are many Senators who chose not to speak today.

Mr. President, I rise in support of the Warner-Mikulski amendment to the D.C. appropriation bill. I believe it is a good solution to a delicate problem. And furthermore, I believe it is proper for the Congress to legislate in this area.

This issue is not a new one to me. My first practical job was as a city attorney. The city I worked for passed an ordinance requiring that certain city employees live in the city. It did not work.

The main responsibility of any city government is to provide services in an efficient and economical manner. For example, a city government must ensure that its fire department can quickly and effectively respond to an emergency situation. To do this requires modern equipment, effective management and highly trained and motivated employees.

What is important is how city employees perform their duties, not where they live. The City Council of Henderson saw that their residency requirement, although grounded in good intentions, was hurting the city. The Henderson City Council subsequently revoked the residency requirement ordinance.

The government of the District of Columbia has had many, many opportunities to address the problems caused by the residency requirement. It has also had plenty of congressional urging to review the flawed policy. And my good friend, the Senator from Maryland, has personally spent many hours of her time working with the District government to develop a fair policy that ensures the safety of D.C. citizens as well as the rights of District employees.

Frustration with the District came to the surface last week in the House when it voted to prohibit the expenditure of funds to enforce the residency requirement. We are about to consider

an amendment putting into law report language giving the District government until May of next year to develop a D.C. hiring preference. I urge my colleagues to support this amendment, because this compromise is fair, it is well reasoned, and should be adopted.

The PRESIDING OFFICER. Is there further debate on the amendment of the Senator from Virginia? If not, the question occurs on agreeing to the amendment of the Senator from Virgina.

The amendment (No. 2536), as modified, was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HARKIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Ms. MIKULSKI. Will the Senator from Iowa yield?

Mr. HARKIN. yes.

Ms. MIKULSKI. Mr. President, now that we have completed action on that amendment, I would like to thank the Senator from Iowa for his assistance in moving this legislation. He really helped defang a most prickly parliamentary situation, and we thank him for his actions.

I would also like to thank my colleagues from Virginia, my senior Senator, and the distinguished majority leader and minority leader for resolving essentially what was a parliamentary thicket but an important policy consideration. I think all of us are most satisfied with the outcome and we look forward to the completion of the bill.

Mr. HARKIN. I thank the Senator for her kind words. I, too, wish to thank Senator MIKULSKI for her work on this legislation. She is a very valuable member of the Appropriations Committee and has worked with us on many occasions on issues regarding the District of Columbia. I find her counsel wise and judicious, as I have also in this matter. Her calm demeanor and her persistence in trying to find a solution to this are most appreciated by this Senator.

Mr. SARBANES. Will the Senator from Iowa yield?

Mr. HARKIN. Yes, I yield.

Mr. SARBANES. Mr. President, I wish to commend my colleague from Maryland and the two Senators from Virginia and the Senator from Iowa for their efforts in this matter. I particularly wish to thank the majority leader, whose wise and calm and restraining hand, I think, played a major part in enabling this matter to be reconciled as it has been done. It avoided raising very serious questions about the institution of the Senate and its procedures and precedents, which are important to all of us who care about the Senate as an institution and, at the same time, I think we have been able to address the substance of the issue with which we were very much concerned.

I think the proposal that is now before us obviously sends a very clear and strong message in terms of what is now expected in addressing this residency issue that the District of Columbia has sought to maintain in place. It also addresses a lot of the human difficulties which that requirement has raised. Therefore, I think it represents a major step forward in addressing what many of us perceived as inequities in this situation.

Mr. HARKIN. Mr. President, parliamentary inquiry as to the situation with allowed amendments remaining on this bill. Last night, a unanimous-consent agreement was reached limiting the number of amendments allowed yet on this bill. I wonder if the Chair could enlighten the Senate as to what amendments are yet pending on the bill?

The PRESIDING OFFICER. The Chair will state that the pending business of the Senate is the remaining committee amendment on page 24 of the bill. By a unanimous-consent agreement last night, the remaining amendments that are in order are an amendment by the Senator from New Hampshire; an amendment by the Senator from Iowa, Senator HARKIN; two further amendments by the Senator from Iowa of a technical nature; an amendment by the Senator from Colorado, Senator ARMSTRONG; and an additional amendment by the Senator from Oklahoma, Senator NICKLES.

Mr. HARKIN. Mr. President, I will be offering my two technical amendments. Before I do that, I yield to the junior Senator from Virginia.

Mr. TRIBLE. Mr. President, I rise to discuss several provisions of the D.C. appropriations bill, and to signal my opposition to the city's plan to construct new prison facilities at Lorton, VA.

First, I want to extend my appreciation to the chairman and ranking Republican of the D.C. Subcommittee, Senators HARKIN and NICKLES. They have been most responsive and most cooperative in addressing my concerns about the city's prison system and its impact on the Commonwealth of Virginia.

I am especially pleased that this bill contains my amendment to establish a drug interdiction task force at the Lorton prison. The drug problem at Lorton is severe. During the last several months alone, more than 80 visitors to the prison were found to be in possession of illicit narcotics. Mr. President, the very last thing that an overcrowded prison needs is an infusion of illegal drugs. This amendment can help to prevent that.

This proposal earmarks $250,000 to finance a task force that will help prevent the smuggling of narcotics into the Lorton prison. Federal law enforcement authorities, working in cooperation with city police, will establish a more constant and visible presence at the prison, especially on visiting days when the drug problem is at its worst. We must act to ensure that narcotics do not add to the instability at Lorton, and this amendment will help to accomplish that.

I am also pleased that the bill contains two other proposals I have offered in previous years.

The first earmarks $100,000 to reimburse two northern Virginia counties for costs they incur when responding to emergencies at the prison. When escapes or riots occur at Lorton, Fairfax and Prince William Counties must send their own police, fire, or medical emergency teams to respond. A single major incident can cost the counties tens of thousands of dollars in manpower and equipment costs. This proposal ensures that if such incidents occur, the costs are borne by the District, and not by the citizens of northern Virginia.

In addition, the bill requires that the city operate a free telephone information service for residents of the Lorton area. These good people live with constant concern about the operation of this facility, about escapes and disturbances that occur all too often. The phone service can help ease those concerns by providing accurate, up-to-date information on conditions at the prison. And I note that the committee will implement the same program for the area in Southeast Washington where the city's newest prison will be built.

These amendments will help ease the concerns that many northern Virginians have about Lorton. I appreciate the cooperation of the committee, the chairman and ranking Republican. And I have tried to return that cooperation. I have never been one to bash the District or to engage in shouting matches with city officials. Instead, I have sought to fashion and support constructive solutions to problems that divide the city and the suburbs.

Senator WARNER's amendment, offered by the Senators from Virginia and Maryland, offered such a solution to the dispute over the city's residency requirement. The amendment will effectively end the residency rule, but it will also give the city time to adopt a hiring preference system in its place. That amendment is a fair and reasonable approach to a divisive problem and I am pleased it has been passed now by the Senate.

But I do want to put the city government and my colleagues on notice, that my degree of cooperation has its limits, and I draw the line at expanding Lorton. I will strongly oppose the Mayor's plans to expand Lorton prison again.

Just days ago Mayor Barry requested the city council to approve a $45 million bond issue to build an additional 800 beds at Lorton. Once more the city has sought to resolve its prison problems by looking first to Virginia. The city's instinctive reaction to prison crowding seems to be to dump more and more prisoners on Fairfax County. Enough is enough.

During the debate over residency, city officials have uttered one constant refrain: Home rule, home rule. Well, home rule involves responsibilities as well as privileges. It is the responsibility of the D.C. government to take care of its own prison problems and not impose them on my fellow Virginians.

The appropriations bill contains no funds for the expansion of Lorton. It does not approve the Mayor's request for a bond issue to build more beds at the Lorton site. And I want the city and my colleagues to know that I will oppose giving the city such authority. I will vote against it and I will speak against it at length if necessary.

City officials must stop looking toward Virginia to solve their own problems, especially the problems of their prison population.

Again, I want to thank the managers of this bill for their positive cooperation in fashioning this measure and in considering the concerns of the citizens of Virginia. I also want to note the extraordinary cooperation between the Senators of Maryland and Virginia. It is not often that we can stand shoulder to shoulder and work together as we have on this amendment. The interests of Maryland and Virginia converge far more often than they diverge and it is my hope that we can work together more often in the days ahead.

I yield the floor.

EXCEPTED COMMITTEE AMENDMENT

The PRESIDING OFFICER. The Senator from Virginia yields the floor.

Is there any further debate on this amendment? If not, the question is on agreeing to the remaining committee amendment.

The committee amendment on page 24, beginning on line 17, was agreed to.

Mr. NICKLES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HARKIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2537

Mr. HARKIN. Mr. President, I send a technical amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes an amendment numbered 2537. On page 11 at line 9 strike $3,692,000 and insert in lieu thereof $4,192,000.

Mr. HARKIN. Mr. President, this amendment corrects an error in the printed version of H.R. 4776. It substitutes $3,692,000 that appears in the bill with $4,192,000. It has been cleared on both sides.

Mr. NICKLES. It has been cleared.

The PRESIDING OFFICER. Is there any further debate on this amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 2537) was agreed to.

Mr. NICKLES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HARKIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2538

Mr. HARKIN. Mr. President, I have another technical amendment. I send it to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes an amendment numbered 2538.

At the appropriate place in the bill:

SEC. . Such sums as may be necessary for fiscal year 1989 pay raises for programs funded by this Act shall be absorbed within the levels appropriated in this Act.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, this amendment has been requested by the Budget Committee. It simply states that no funds are included in this bill for Federal pay raises. This provision has been included in other appropriations bills. While it really has no effect on the District, I offer it on behalf of Senator CHILES and the Budget Committee. I believe it has been cleared.

Mr. NICKLES. Mr. President, the Senator is correct. It has been cleared.

Mr. CHILES. Mr. President, the Senate Budget Committee has examined H.R. 4776, the District of Columbia appropriations bill and has found that the bill is under its 302(b) budget authority allocation by $4 million and exactly at its 302(b) outlay allocation.

I compliment the distinguished manager of the bill, Senator HARKIN, and the distinguished ranking member of the District of Columbia Subcommittee, Senator NICKLES on all their hard work.

Mr. President, I have a table from the Budget Committee showing the official scoring of the District of Columbia appropriations bill and I ask unanimous consent that it be printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

SENATE BUDGET COMMITTEE SCORING OF H.R. 4776

DISTRICT OF COLUMBIA—SPENDING TOTALS

[Senate subcommittee markup in billions of dollars]

	Fiscal year 1989	
	Budget authority	Outlays
302 (B) bill summary:		
H.R. 4776, Senate subcommittee markup (new BA and outlays)	0.5	0.5
Enacted to date	+(1)	+(1)
Adjustment to conform mandatory programs to resolution assumptions		
Scorekeeping adjustments		
Bill total	.6	.6
Subcommittee 302(b) allocation	.6	.6
Difference	−(1)	0
Bill total above (+) or below (−): President's request	+(1)	+(1)
Summit cap summary:		
Domestic discretionary spending in bill	.6	.6
Allocation under domestic cap	.6	.6
Difference	−(1)	0

[1]Less than $50 million.

Note.—Details may not add to totals due to rounding. Prepared by Senate Budget Committee Staff.

Mr. DOMENICI. Mr. President, I rise in support of the District of Columbia appropriations bill for fiscal year 1989, S. 2562.

The bill as reported provides $0.5 billion in new budget authority and outlays for the government of the District of Columbia. The reported bill is under the subcommittee's 302(b) allocation by $4 million in budget authority and exactly at their allocation for outlays.

I want to commend the distinguished chairman and ranking member of the District of Columbia Subcommittee for producing a bill that is within their 302(b) allocation.

I want to express my concern, however, at the committee's departure from using the customary Hyde language with regard to funding for abortions. The Hyde language, which the Congress has been using for several years now, prohibits the use of Federal funding to perform abortions except when the life of the mother is endangered. The committee has expanded this exception to include cases of rape and incest. This change in current policy is unacceptable and may lead to a Presidential veto.

I hope the Senate will delete the language to which the administration objects so that the bill can be adopted, sent to conference, and presented for the President's signature into law.

The PRESIDING OFFICER. Is there any further debate on this amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 2538) was agreed to.

Mr. NICKLES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HARKIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2539

Mr. NICKLES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES], for Mr. HELMS, proposes an amendment numbered 2539.

Mr. NICKLES. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, add the following:

SEC. . None of the federal funds appropriated by this Act shall be obligated or expended after December 31, 1988, if on that date the District of Columbia has not repealed D.C. Law 6-170, the Prohibition of Discrimination in the Provision of Insurance Act of 1986 (D.C. Law 6-170).

Mr. NICKLES. Mr. President, this amendment I have sent to the desk and asked for the immediate consideration of is an amendment by Senator HELMS. It was an amendment that he offered last year and passed by a large margin in the Senate last year.

Mr. HARKIN. Mr. President, we have looked at the amendment, and it was adopted last year by the Senate. It is acceptable.

The PRESIDING OFFICER (Mr. DIXON). Is there any further debate on this amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 2539) was agreed to.

Mr. NICKLES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HARKIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2540

Mr. HUMPHREY. Mr. President, I have an amendment which I send to the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. HUMPHREY] proposes an amendment numbered 2540.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . None of the funds appropriated under this Act for the Mayor of the District of Columbia shall be expended after January 1, 1989, if on that date, using existing powers, the Department of Human Services has not implemented a system of mandatory reporting of individual abortions performed in the District of Columbia; and categories of data collected under such system shall be substantially similar to those collected by the National Center for Health Statistics: *Provided*, That the Department of Human Services shall not require reporting of the identity of the aborting woman or the abortion provider, and shall ensure that the identity of the aborting woman and abortion provider remain strictly confidential, and data be used for statistical purposes only.

Mr. HUMPHREY. Mr. President, this amendment has been cleared with the floor managers.

This amendment would require reporting of data on abortions performed in the District of Columbia.

Since 1985, the District Department of Human Services has sought improved data on induced abortions performed by hospitals, clinics, and physicians in the District of Columbia.

DHS' most recent request came in a statistical note completed in September 1987, which provided data on 1986 abortions performed in the District:

The voluntary system of reporting abortions results in incomplete reporting and therefore incomplete statistics. DHS is recommending mandatory reporting of all pregnancy terminations. More than two-thirds of the States currently require the reporting of abortions.

DHS is absolutely committed to the principles of confidentiality and protecting each individual's right to privacy.

It is recommended that the National Center for Health Statistics' U.S. Standard Report of Induced Termination of Pregnancy be utilized to collect abortion data in the District of Columbia. This report does not require the reporting of patients' names or any other information which would threaten their privacy.

Mandatory reporting of pregnancy terminations will enable DHS to better inform the public on trends in births and abortions and will improve the department's ability to plan the delivery of health and family planning services.

DHS made similar requests in the statistical notes released in 1985 and 1986. In addition, a 1986 summary of State reporting requirements prepared by DHS' Office of Research and Statistics noted:

It is not unreasonable to assume that mandatory reporting of individual abortions would lead to much less under reporting than exists with the current District of Columbia voluntary reporting system with data supplied in aggregated form.

The quantity and quality of the District's abortion data could be improved by changing the abortion report form utilized.

Currently, abortion providers are not required to provide data on abortions. The reporting requirement is voluntary.

As a result, District officials report that data on this procedure may greatly underestimate the actual number of abortions.

Today, at least 35 States require mandatory reporting of abortions. Such provisions are constitutional where their purpose is securing data intended to promote the health and welfare of the public, and where the identities of the women securing the abortions are kept strictly confidential.

My amendment falls safely within these constitutional guidelines. The data collected as a result of a mandatory reporting system would ensure the accuracy and completeness of data already collected on a voluntary basis by the District.

The amendment is intended only to advance the District's plan to inform the public on trends in births and abortions, and to improve the District's ability to plan the efficient and effective delivery of health services.

I ask unanimous consent that the full text of documents containing the requests of District statisticians be printed in the RECORD. I also ask unanimous consent that a document prepared by District officials detailing the reporting requirements of at least 35 States be printed in the RECORD.

I urge support for the amendment.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MANDATORY ABORTION REPORTING—THE RESPONSE FROM THE STATES

(By Sara T. Glendinning)

In January, 1987 a letter was sent from the D.C. Department of Human Services to each of the 50 states explaining that the District of Columbia currently has a voluntary system of reporting abortions to DHS's Research & Statistics Division. Because this system results in incomplete reporting, DHS is considering drafting legislation for the mandatory reporting of all abortions. Those states having mandatory reporting of abortions were asked to send a copy of the legislation that led to their mandatory reporting system. The letter also solicited any comments or suggestions the respondent might have with regard to mandatory abortion reporting.

Letters of response were received from 35 of the 50 states queried. Four of the responding states (California, Delaware, Iowa, and West Virginia) reported not having a mandatory abortion reporting system. Iowa reported that they have neither voluntary nor mandatory abortion reporting. The remaining 31 states responding reported having mandatory abortion reporting in their states. Four of the 15 states which did not respond to DHS's letter (Colorado, Kansas, Rhode Island, and Virginia) provide their data on individual reports of abortions (induced terminations of pregnancy) to the National Center for Health Statistics indicating that these states have mandatory reporting of abortions. Therefore, abortion reporting is mandatory in at least 35 states,

more than two-thirds of the states in America.

The following is a short description of the reporting requirements of the 31 responding states with mandatory abortion reporting and any comments and/or suggestions made by the respondents:

ARIZONA

In July 1976, the Arizona State Department of Health Services began an Abortion Surveillance Reporting Program. An Induced Termination of Pregnancy Report is to be completed for each abortion performed in hospitals, outpatient treatment centers, and physicians' offices for which a fetal death certificate is not required. A fetal death certificate is required for each fetal death after a gestation period of 20 completed weeks. Also, each hospital and outpatient treatment center in Arizona is required to submit a monthly report to the state registrar showing the total number of abortions performed in that facility.

ARKANSAS

Each induced termination of pregnancy is to be reported to the Division of Health Statistics on a monthly basis by the person in charge of the institution in which the induced termination of pregnancy was performed. If the induced termination of pregnancy was performed outside an institution, the attending physician is responsible for preparing and filing the report.

FLORIDA

The director of any medical facility in which a pregnancy is terminated, or the physician performing the procedure if the termination of pregnancy is not performed in a medical facility, shall maintain a record of such procedures. The record shall include the date the procedure was performed, the reason, and the period of gestation at the time the procedure was performed. A copy of the record shall be filed with the Department of Health and Rehabilitative Services. Florida's Director of Vital Statistics reported that funds have never been provided for monitoring or enforcing this law nor does the law provide for special penalties for failure to comply. Therefore, he is sure there is significant under reporting. He suggests that any law to be effective must be backed up by an adequately funded enforcement program and include specific penalties which can be efficiently imposed.

GEORGIA

Each induced termination of pregnancy occurring in Georgia, regardless of the length of gestation or weight, shall be reported within 10 days by the person in charge of the institution or clinic, or their designated representative, in which the induced termination was performed. The attending physician shall prepare and file the report within 10 days if the abortion was performed outside an institution or clinic.

HAWAII

Hawaii is one of the 15 or so states which adopted the WHO recommendation of filing all fetal deaths regardless of gestational age. Abortions have been routinely reported on their fetal death certificate forms since the abortion law was passed in Hawaii in 1970.

ILLINOIS

Abortion report forms, signed by the physician who performed the abortion, must be transmitted to the Department of Public Health not later than 10 days following the end of the month in which the abortion was performed. Intentionally, knowingly, or recklessly failing to submit a complete abortion report is a misdemeanor.

INDIANA

The physician performing an abortion shall complete and transmit the report to the Indiana Board of Health no later than July 30 for each abortion performed in the first 6 months of that year and no later than January 30 for each abortion performed in the last 6 months of the preceding year. Each failure to file the form on time is a class B misdemeanor. The Director of the State Board of Health's Division of Public Health Statistics believes their certificate is more inclusive and better than the proposed National Cooperative Health Statistics form.

LOUISIANA

The original statutes mandating report of abortions were enacted in 1973. Completed abortion report forms are to be sent to the Division of Vital Records within 15 days of the performing of such abortions. Failure to complete such form is a misdemeanor. The State Registrar reports that although there are penalties prescribed in the statutes for failure to report abortions, violators are not diligently prosecuted.

MAINE

Maine has had mandatory reporting of abortions (spontaneous and induced) since 1978. They use the U.S. Standard Report of Induced Termination of Pregnancy for reporting each abortion. Reports are to be transmitted to the Department of Human Services not later than 10 days following the end of the month in which the abortions are performed.

MICHIGAN

A physician who performs an abortion shall report the performance of that procedure within 7 days on forms prescribed and provided by the Department. The State Registrar reports they are not happy with the legislation because:

(1) Data items to be included are specified in statute.

(2) The Department has no flexibility to collect additional information.

(3) Some of the data elements are not necessary.

(4) There is no mechanism to enforce reporting.

(5) Tabulations of the data are limited since they do not want to statistically be close to divulging the identity of a person.

(6) Abortions post 20 weeks are also reported as fetal deaths.

MINNESOTA

By the 10th day of each month all pregnancy terminations performed during the preceding month shall be reported on forms prescribed by the Commissioner. A physician who performs an abortion and does not transmit the required information to the Minnesota Board of Health within 30 days after the abortion is guilty of a misdemeanor. The Director of the Minnesota Center for Health Statistics thinks abortion reporting by clinics and hospitals is close to 100% but that there is some under reporting by physicians who perform several terminations per year.

MISSISSIPPI

Each induced termination of pregnancy shall be reported to the State Registrar within 5 days by the person in charge of the institution in which the induced termination of pregnancy was performed. If the abortion was performed outside an institution, the attending physician shall prepare and file the report. The Deputy State Registrar reports that they are certain that abortions are under reported but that they have no basis for estimating how much.

MISSOURI

An individual abortion report for each abortion performed shall be completed by the attending physician and submitted to the State Department of Health within 45 days from the date of the abortion. All complication reports shall be signed by the physician providing the post-abortion care and submitted to the Department of Health within 45 days from the date of the post-abortion care. Failure to report an abortion is a Class A misdemeanor.

MONTANA

An abortion report must be filed with the Department of Health within 30 days after an abortion is performed in Montana. Failure to submit a report is a misdemeanor.

NEBRASKA

Abortion reports shall be signed by the attending physician and sent to the Bureau of Vital Statistics within 15 days after each reporting month. Failure to report an abortion is a Class 11 misdemeanor. The Director of the Bureau of Vital Statistics reports that even with the statutory requirement to report abortions they believe this system is not 100% effective.

NEVADA

An abortion reporting form similar to the U.S. Standard recommended by the National Center for Health Statistics shall be completed by the physician or his staff for each abortion performed. Each hospital shall submit a monthly report to the State Registrar of Vital Statistics regarding patients admitted for a complication which resulted from an abortion.

NEW MEXICO

Each induced abortion occurring in New Mexico shall be reported to the State Registrar within 5 days by the person in charge of the institution in which the induced abortion was performed or by the attending physician if the induced abortion was performed outside an institution. The State Registrar reports that there is no real mechanism for insuring that all abortions are reported.

NEW YORK

In New York State all fetal deaths, both spontaneous and induced, must be registered. A fetal death shall be registered within 72 hours after expulsion of the fetus. The certificate of fetal death shall contain such information and be in such form as the Commissioner of Public Health may prescribe.

NORTH DAKOTA

An individual abortion report for each abortion shall be completed by the attending physician. This report shall include the data called for in the U.S. Standard Report of Induced Termination of Pregnancy as recommended by the National Center for Health Statistics. Abortion reports shall be submitted to the Department of Health within 30 days from the date of the abortion. All complication reports must also be submitted to the Department of Health within 30 days from the date of the post-abortion care. The Department of Health shall report to the Attorney General any apparent violation.

OREGON

Each induced termination of pregnancy which occurs in Oregon, regardless of the length of gestation, shall be reported to the Vital Statistics Unit within 5 days by the

persons in charge of the institution in which the induced termination of pregnancy was performed or by the attending physician if the procedure was performed outside of an institution. The abortion statute was included in Oregon's 1978 Model Vital Statistics Act. The State Registrar feels that asking for the abortion reporting requirement as part of the adoption of the total 1978 revision minimized greatly the controversy which might otherwise have occurred.

PENNSYLVANIA

Pennsylvania's Abortion Control Act of 1982 went into effect in July, 1984. In June, 1986 large portions of the law were found invalid by the U.S. Supreme Court. The individual patient report form was nullified by the U.S. Supreme Court primarily because of burdensome information requirements and the lack of confidentiality. Pennsylvania's main source of abortion information is the quarterly facility report of aggregated data. The right of public access and copying of both the registration and the quarterly facility from have been enjoined. Pennsylvania only releases annual reports which summarize the data received through the quarterly report form, and the reports of maternal death. The quarterly report form solicits aggregated data on weeks of gestation, primary type of procedure, age of women, complications, concurrent conditions/indications, and counties or other states/countries of residence.

SOUTH CAROLINA

Any abortion performed in South Carolina shall be reported to the State Registrar, Department of Health and Environmental Control, within 7 days after the abortion is performed. When an abortion is performed in a hospital, clinic or other institution, the person in charge of the institution or his designated representative shall complete the abortion report on behalf of the performing physician. When an abortion is performed outside a hospital, clinic or other institution, the physician performing the abortion shall be responsible for completing the abortion report form and filing it within the time prescribed by law.

SOUTH DAKOTA

Any facility or physician performing abortions shall complete an Induced Abortion Report for each abortion. All reports for abortions performed in a month should be reported to the Health Department on or before the 10th day of the following month.

TENNESSEE

Each induced termination of pregnancy occurring in Tennessee shall be reported to the Office of Vital Records within 10 days after the procedure by the person in charge of the institution in which the abortion was performed or by the attending physician if performed outside an institution. The State Registrar reports that even with mandatory reporting of abortions they continue to experience under reporting. They follow up whenever the number of abortions reported from a facility is less than their usual caseload. She feels certain that abortions performed in physicians' offices are especially under reported, yet there is no method by which to check on individual practitioners.

TEXAS

All providers of abortion services (hospitals, ambulatory surgical centers and private physician offices) must submit an annual report to the Texas Department of Health on a form provided by the Department. The annual report for each licensed facility is due 30 days prior to the expiration date of the annual license or 30 days following the expiration, revocation, or withdrawal of the temporary license. The reporting period for each unlicensed facility will be January-December 31 of each year with the report submitted no later than January 31 of each year. Failure to submit an annual report is punishable as a Class A misdemeanor.

UTAH

A Report of Induced Termination of Pregnancy must be filed with the Utah Department of Health within 10 days after an abortion. Utah's report form includes considerably more items than on the recommended U.S. Standard. For example, Utah's form seeks information on religion, source of payment, contraceptive history and methods used, and reason for termination. Failure to file an abortion report is a Class A misdemeanor.

VERMONT

Vermont's statute regarding abortion reporting was enacted in 1973. "It did not receive the publicity or create the reaction it would today," according to the Vital Statistics Chief. All induced abortions shall be reported by the hospital or physician directly to the Health Commissioner on forms prescribed by the Board within 7 days after an abortion is performed.

WASHINGTON

Each hospital and facility where abortions are performed is required to report all induced termination procedures to the Department of Social and Health Services. Reports for abortions performed during any given month are to be submitted by the 15th. of the following month. March 15th. is the cut-off date for late filing of abortion reports of the preceding calendar year. People knowledgeable about local abortion services in Washington estimate from 6 to 10 percent known noncompliance (i.e., there were no reports from some clinics and offices known to provide abortion services).

WISCONSIN

Wisconsin's reporting requirement just began on January 1, 1987, after being enacted April 29, 1986. On or before January 15 annually, each hospital, clinic or other facility in which an induced abortion is performed must file with the Department of Health and Social Services a report for each induced abortion performed in the previous calendar year. Wisconsin's report form asks only for that information required in the statute, which is less information than many other states collect. The respondent from their Center for Health Statistics suggests that we seek legislation that specifies "all information relevant to public health concerns and demographic research."

WYOMING

Wyoming's Office of Vital Records was responsible for providing an abortion reporting form to be used after May 27, 1977 for reporting every abortion performed in Wyoming. The attending physician is responsible for completing the form and sending it to the administrator of the Division of Health and Medical Services within 20 days after the abortion is performed. Although abortion reporting is mandatory, there is significant under reporting. The Vital Statistics Analyst responding to our letter believes that there must be some type of identifier on the abortion record so that cross checks can be made with the provider to ensure complete reporting.

IDAHO

The Idaho Legislature passed a law in 1977 requiring the reporting of abortions. This law was recodified, along with the entire Vital Statistics Act, to be aligned with the model Vital Statistics Act in 1983. The statute requires that the abortion report form include as a minimum the items required by the standard reporting form recommended by the National Center for Health Statistics. Completed forms must be filed by the attending physician and sent to the Vital Statistics Unit within 15 days after the end of each reporting month.

SYNOPSIS

Abortion reporting became mandatory in many of the above states ten or more years ago, before the abortion issue became as highly charged as it is today. Several of the responding states with mandatory reporting indicated that under reporting existed. Mandatory abortion reporting with enforcement programs and specific penalties does not guarantee 100% reporting. However, it is not unreasonable to assume that mandatory reporting of individual abortions would lead to much less under reporting than exists with the current District of Columbia voluntary reporting system with data supplied in aggregated form.

With the current sensitivity regarding abortions and the action by the U.S. Supreme Court last year nullifying Pennsylvania's individual patient report form, implementation of mandatory reporting of abortions legislation in the District of Columbia may be difficult to obtain. However, the quantity and quality of the District's abortion data could be improved by changing the abortion report form utilized. DHS could notify abortion providers in the District of Columbia that in 1988 we would like them to begin using the U.S. Standard Report of Induced Termination of Pregnancy (Rev 1/88) to report all abortions. The Federal form will appear more official and mandated even though reporting would continue to be voluntary

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INDUCED TERMINATIONS OF PREGNANCY (ABORTIONS) IN THE DISTRICT OF COLUMBIA: 1984

(By Sara T. Glendinning)

The number of abortions performed in the District of Columbia in 1984 and reported to the D.C. Department of Human Services was 23,132, one percent more than the 22,867 District of Columbia abortions reported in 1983. However, the abortions performed in the District of Columbia on D.C. residents decreased approximately four percent (from 11,775 in 1983 to 11,266 in 1984). When the 1983 and 1984 residence "not stated" cases are distributed according to the reported residence proportions, the number of abortions performed in the District on D.C. residents decreased three percent between 1983 and 1984.

For D.C. residents in 1984 the percentage of pregnancies (abortions plus live births) terminated by abortion was 54.6,[1] a 1.3 percent decrease from the 1983 percentage of 55.3

The abortion rate (abortions per 1,000 females 15–44 years of age) for D.C. residents decreased from 68.8 in 1983 to 67.2[1] in 1984, a 2.3 percent decrease. This rate has been declining each year since 1980 when it was 81.2. At the same time the fertility rate

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[1]In these computations 1984 "not stated" cases were distributed according to the proportion of reported residence.

(births per 1,000 females 15–44 years of age) increased slightly—from 54.5 in 1980 to 55.9 in 1984.

Abortions in the District of Columbia are reported to DHS on a voluntary basis by the hospitals and free-standing clinics. Reports are confidential and DHS does not provide abortion data on individual hospitals and clinics. In 1984, pregnancy termination reports were received from the same 12 facilities reporting in 1983. DHS does not receive reports on abortions performed in physician's offices and those abortions are not included in the 23,132 total. Nationally in 1980, 4 percent of abortions were performed in physician's offices. If it is assumed that 4 percent of abortions in D.C. were performed in physician's offices in 1984, the total would then be 24,096.

Tables 2–11 show the frequency distributions of various items. Cross tabulations of these items are not possible with the current reporting system as data are now reported in an aggregated form rather than on each individual abortion. Some items of interest are:

D.C. resident abortions were 48.7 percent of the total 1984 abortions, a slight decrease from the 51.5 percent in 1983.

Of the 23,132 abortions reported in the District of Columbia, 19.9 percent were to women under 20 years of age and 50.0 percent were to women under age 25. According to a report by the National Center for Health Statistics,[2] 27.3 percent of the abortions in 1981 reported by 12 states were to women under age 20 and 61.7 percent were to women under age 25. In 1984, 20.0 percent of the D.C. residents obtaining abortions in the District of Columbia were under 20 years of age and 51.2 percent were under age 25.

Almost three-fourths (74.1 percent) of the women obtaining an abortion in D.C. were unmarried and approximately two-thirds (64.9 percent) had never been married. In the NCHS report, 74.8 percent of the women were unmarried.

In D.C., 39.6 percent of the women obtaining abortions in 1984 reported they had not had a prior abortion while the NCHS report showed 63.1 percent of women had no prior abortion. Almost 19 percent of the women receiving abortions in D.C. in 1984 reported having had two or more previous abortions. The percentage of women reporting one or more previous abortions has been increasing in the District of Columbia as follows:

Year	*Percent*
1984	48
1983	47
1982	44
1981	38
1980	32
1974	21

Most of the women receiving an abortion in D.C. (88.3 percent) were outpatients and suction curettage was the primary method of abortion in more than 80 percent of the cases.

Over half (53.9 percent) of the D.C. abortions were under 9 weeks gestation, and 27.8 percent were 9–12 weeks gestation. The NCHS report shows 48.2 percent under 9 weeks and 41.5 percent 9–12 weeks of gestation.

Less than one percent of the abortions had complications both in D.C. in 1984 and in the NCHS report. Only 30 of the 23,132 women receiving abortions in D.C. were hospitalized due to complications resulting from their abortions.

Abortions paid for by the D.C. government are reported on a fiscal year basis. The District of Columbia paid for 10,357 abortions in Fiscal Year 1984 at an estimated cost of $1,790,710.

Fourteen states and New York City are being funded by the Vital Statistics Cooperative Program of the National Center for Health Statistics to collect individual patient abortion data. Reporting is mandatory but confidential with the forms requiring patient numbers instead of names. NCHS developed the model reporting form used by these states and New York City. The District of Columbia abortion data would be much more valuable if there was mandatory reporting of individual abortions instead of the current voluntary reporting system with data supplied in aggregated form. With mandatory reporting of individual abortions data would be obtained on all abortions performed in the District of Columbia and cross tabulations would be possible.

TABLE 1.—INDUCED ABORTIONS: TOTAL AND D.C. RESIDENTS, 1973–84

Year	Abortions	
	Total	D.C. residents
1984	23,132	11,266
1983	22,867	11,775
1982	24,207	12,350
1981	25,952	13,014
1980	27,183	13,809
1979	28,694	13,611
1978	29,786	13,350
1977	29,545	12,718
1976	31,407	12,945
1975	31,519	13,621
1974	33,010	12,080
1973	40,812	10,019

TABLE 2.—ABORTIONS BY RESIDENCE, 1984

Residence	Number	Percent
Total	23,132	100.0
District of Columbia	11,266	48.7
Maryland	7,592	32.8
Virginia	3,149	13.6
Other	707	3.1
Not stated	418	1.8

TABLE 3.—ABORTIONS BY AGE AND RESIDENCE, 1984

Age (in years)	Total	District of Columbia	Maryland	Virginia	Other States	Not stated
Total	23,132	11,266	7,592	3,149	707	418
Under 15	404	229	124	38	13	0
15 to 19	4,200	2,026	1,479	524	169	2
20 to 24	6,954	3,518	2,251	951	232	2
25 to 29	5,131	2,440	1,785	769	137	0
30 to 34	3,008	1,388	1,045	464	110	1
35 to 39	1,148	485	420	218	25	0
40 to 44	222	86	97	35	4	0
45 and over	25	15	8	2	0	0
Not stated	2,040	1,079	383	148	17	413

TABLE 4.—ABORTIONS BY MARITAL STATUS, 1984

Marital Status:	Number	Percent
Total	23,132	100.0
Never married	15,018	64.9
Currently married	4,084	17.7
Separated	1,070	4.6
Divorced	980	4.2
Widowed	86	0.4
Unknown	1,894	8.2

TABLE 5.—ABORTIONS BY RACE, 1984

Race	Number	Percent
Total	23,132	100.0
Black	13,187	57.0
White	6,211	26.9
Other	1,878	8.1
Unknown	1,856	8.0

TABLE 6.—ABORTIONS BY NUMBER OF PREVIOUS ABORTIONS, 1984

Previous abortions	Number	Percent
Total	23,132	100.0
None	9,159	39.6
One	6,705	29.0
Two	2,708	11.7
Three or more	1,618	7.0
Not stated	2,942	12.7

TABLE 7.—ABORTIONS BY TYPE OF PATIENT, 1984

Type	Number	Percent
Total	23,132	100.0
Inpatient	1,756	7.6
Outpatient	20,430	88.3
Unknown	946	4.1

TABLE 8.—ABORTIONS BY PRIMARY METHOD, 1984

Primary method	Number	Percent
Total	23,132	100.0
Suction curettage	18,710	80.9
Sharp curettage	2,583	11.2
Saline injection	286	1.2
Not stated	1,553	6.7

TABLE 9.—ABORTIONS BY LENGTH OF GESTATION, 1984

Gestation (in weeks)	Number	Percent
Total	23,132	100.0
Under 9	12,465	53.9
9–10	4,285	18.5
11–12	2,159	9.3
13–15	1,712	7.4
16 or more	613	2.7
Unknown	1,898	8.2

TABLE 10.—ABORTIONS BY COMPLICATIONS, 1984

Complications	Number	Percent
Total	23,132	100.0
Total complications	176	0.8
Resulting in hospitalization	30	0.1
Resulting in Death	0	0.0
Other	146	0.7
No complications	22,956	99.2

TABLE 11.—ABORTIONS BY MONTH, 1984

Month	Number	Percent
Total	23,132	100.0
January	2,068	8.9
February	2,143	9.3
March	2,305	10.0
April	1,941	8.4
May	1,954	8.4
June	2,039	8.8
July	1,839	7.9
August	1,992	8.6
September	1,727	7.5
October	1,812	7.8
November	1,704	7.4
December	1,608	7.0

[2]National Center for Health Statistics: "Induced Terminations of Pregnancy: Reporting States, 1981." Monthly Vital Statistics Report, Volume 34, No. 4, Supplement (2), July 30, 1985.

INDUCED TERMINATIONS OF PREGNANCY—ABORTIONS IN THE DISTRICT OF COLUMBIA: 1985

(By Sara T. Glendinning)

The number of abortions performed in the District of Columbia in 1985 and reported to the D.C. Department of Human Services was 19,541, 15.5 percent less than the 23,132 District of Columbia abortions reported in 1984. There were 2,639 fewer abortions reported for D.C. residents between 1984 and 1985. When the 1984 and 1985 residence "not stated" cases are distributed according to the reported residence proportions, the number of abortions performed in the District on D.C. residents decreased 17 percent between 1984 and 1985.

In 1985, the percentage of pregnancies (abortions plus live births) for D.C. residents terminated by abortion was 49.[1], 10.1 percent decrease from the 1984 percentage of 54.6.[1]

The abortion rate (abortions per 1,000 females 15–44 years of age) for D.C. residents decreased dramatically from 67.2[1] in 1984 to 56.0[1] in 1985, a 16.7 percent decrease. This rate has been declining each year since 1980 when it was 81.2. At the same time, the fertility rate (births per 1,000 females 15–44 years of age) has increased from 54.5 in 1980 to 58.0 in 1985.

Abortions in the District of Columbia are reported to DHS on a voluntary basis by hospitals and free-standing clinics. Their reports are confidential and DHS does not provide data on individual hospitals and clinics. In 1985, pregnancy termination reports were received from 11 of the 12 facilities that reported in 1984. The facility not reporting in 1985 closed in November, 1984. DHS does not receive reports on abortions performed in physician's offices and those abortions are not included in the 19,541 total. Nationally in 1980, four percent of abortions were performed in physician's offices. If it is assumed that four percent of abortions in D.C. were performed in physician's offices in 1985, the total number of abortions performed that year would be 20,355.

Tables 2—11 show the frequency distributions of various items. Cross tabulations of these items are not possible with the current reporting system as data are now reported in an aggregated form rather than on each individual abortion. Some items of interest are:

Approximately one-half of the women obtaining abortions in D.C. were residents of the District of Columbia and approximately one-third were residents of Maryland.

Of the abortions reported in the District in 1985, 23.5 percent were to women under 20 years of age and 56.3 percent were to women under age 25. According to a report by the National Center for Health Statistics,[2] 25.5 percent of the abortions in 1983 reported by 13 states were to women under age 20 and 59.7 percent were to women under age 25. In 1985, 24.7 percent of the D.C. residents obtaining abortions in the District of Columbia were under 20 years of age and 58.1 percent were under age 25.

Approximately four-fifths (83 percent) of the women obtaining an abortion in D.C. were not currently married and almost three-fourths (72 percent) had never been married. In the NCHS report, 78 percent of the women were unmarried.

In D.C., 46.3 percent of the women obtaining abortions in 1985 reported they had not had a prior abortion while the NCHS report showed 60.5 percent of women had no prior abortion. Almost one-fourth (24.5 percent) of the women receiving abortions in D.C. in 1985 reported having had two or more previous abortions. The percentage of women reporting one or more previous abortions has been increasing in the District of Columbia as follows:

Year:	*Percent*
1985	54
1984	48
1983	47
1982	44
1981	38
1980	32
1974	21

Most of the women receiving an abortion in D.C. (91.3 percent) were outpatients and suction curettage was the primary method of abortion in 99 percent of the cases.

Over half (53.8 percent) of the D.C. abortions were under 9 weeks gestation and 34.8 percent were 9–12 weeks gestation. The NCHS report shows 48.7 percent under 9 weeks and 41.4 percent 9–12 weeks of gestation.

Less than one percent of the abortions had complications both in D.C. in 1985 and in the NCHS report. Only 28 of the 19,541 women receiving abortions in D.C. were reported to have been hospitalized due to complications resulting from their abortions.

The National Center for Health Statistics funds the collection of individual abortion data from 14 states where the reporting of abortions is mandatory. The report forms, developed by NCHS, require patient numbers instead of names to assure confidentiality. The District of Columbia abortion data would be more valuable if there was mandatory reporting of individual abortions instead of the current voluntary reporting system with data supplied in aggregated form. With mandatory reporting of individual abortions data would be obtained on all abortions performed in the District of Columbia and cross tabulations would be possible.

TABLE 1.—INDUCED ABORTIONS

Year	Abortions	
	Total	D.C. residents
1985	19,541	8,627
1984	23,132	11,266
1983	22,867	11,775
1982	24,207	12,350
1981	25,952	13,014
1980	27,183	13,809
1979	28,694	13,611
1978	29,786	13,350
1977	29,545	12,718
1976	31,407	12,945
1975	31,519	13,621
1974	33,010	12,080
1973	49,812	10,019

TABLE 2.—ABORTIONS BY RESIDENCE, 1985

Residence	Number	Percent
Total	[1]17,742	100.0
District of Columbia	8,627	48.6
Maryland	6,177	34.8
Virginia	2,526	14.3
Other	412	2.3

[1]Does not include 1,799 abortions with unstated residence.

TABLE 3.—ABORTIONS BY AGE AND RESIDENCE, 1985

Age (in years)	Total	District of Columbia	Maryland	Virginia	Other States	Not stated
Total	19,541	8,627	6,177	2,526	412	1,799
Under 15	305	159	101	34	11	.....
15 to 19	3,846	1,969	1,306	485	80	6
20 to 24	5,819	2,868	1,999	793	148	11
25 to 29	4,191	1,970	1,470	661	85	5
30 to 34	2,427	1,149	861	373	43	1
35 to 39	942	406	376	148	12	.....
40 to 44	157	72	54	30	1	.....
45 and over	11	7	3	1	.....	.....
Not stated	1,843	27	7	1	32	1,776

TABLE 4.—ABORTIONS BY MARITAL STATUS, 1985

Marital status	Number	Percent
Total	[1]16,520	100.0
Never Married	11,889	72.0
Currently Married	2,803	17.0
Separated	979	5.9
Divorced	768	4.6
Widowed	81	0.5

[1]Does not include 3,021 abortions with unstated marital status.

TABLE 5.—ABORTIONS BY RACE, 1985

Race	Number	Percent
Total	[1]16,424	100.0
Black	10,041	61.1
White	4,852	29.6
Other	1,531	9.3

[1]Does not include 3,117 abortions with unstated race.

TABLE 6.—ABORTIONS BY NUMBER OF PREVIOUS ABORTIONS, 1985

Previous abortions	Number	Percent
Total	[1]16,677	100.0
None	7,721	46.3
One	4,874	29.2
Two	2,392	14.4
Three of More	1,690	10.1

[1]Does not include 2,864 abortions with unstated number of previous abortions.

TABLE 7.—ABORTIONS BY TYPE OF PATIENT, 1985

Type	Number	Percent
Total	[1]19,469	100.0
Inpatient	1,701	8.7
Outpatient	17,768	91.3

[1]Does not include 72 abortions with unstated type of patient.

TABLE 8.—ABORTIONS BY PRIMARY METHOD, 1985

Primary method	Number	Percent
Total	[1]17,261	100.0
Suction curettage	17,108	99.1
Saline injection	146	0.9
Hysterotomy or hysterectomy	7	0

[1]Does not include 2,280 abortions with unstated primary method of abortion.

[1]In these computations 1984 and 1985 "not stated" cases were distributed according to the proportion of reported residence.

[2]National Center for Health Statistics; *Induced Terminations of Pregnancy: Reporting States, 1982 and 1983.* Monthly Vital Statistics Report, Volume 35, No. 3, Supplement, July 14, 1986.

TABLE 9.—ABORTIONS BY LENGTH OF GESTATION, 1985

Gestation (in weeks)	Number	Percent
Total	[1]17,271	100.0
Under 9	9,296	53.8
9 to 10	3,808	22.1
11 to 12	2,197	12.7
13 to 15	1,531	8.9
16 or more	439	2.5

[1]Does not include 2,270 abortions with unstated length of gestation.

TABLE 10.—ABORTIONS BY COMPLICATIONS, 1985

Complications:	Number	Percent
Total	[1]17,261	100.0
Total Complications	100	6
Resulting in hospitalization	28	.2
Resulting in death		
Other	72	.4
No complications	17,161	99.4

[1]Does not include 2,280 abortions where complications were not stated.

TABLE 11.—ABORTIONS BY MONTH, 1985

Month	Number	Percent
Total	[1]18,831	100.0
January	1,403	7.0
February	1,912	9.7
March	1,886	9.8
April	1,505	8.1
May	1,537	8.3
June	1,687	9.1
July	1,482	8.0
August	1,660	9.0
September	1,377	7.4
October	1,539	8.3
November	1,431	7.7
December	1,412	7.6

[1]Does not include 710 abortions performed at one hospital in the District of Columbia during the last 9 months of 1985. This hospital reported performing 99 abortions in January, 113 in February, and 81 abortions in March. These abortions were not included in the percent calculations.

Induced Terminations of Pregnancy (Abortions) in the District of Columbia: 1986

(By Sara T. Glendinning)

The number of abortions performed in the District of Columbia in 1986 and reported to the D.C. Department of Human Services was 19,942, 2 percent more than the 19,541 District of Columbia abortions reported in 1985. There were 890 more abortions reported for D.C. residents in 1986 than in 1985. When the 1985 and 1986 residence "not stated" cases are distributed according to the reported residence proportions, the number of abortions performed in the District on D.C. residents increased 5.5 percent between 1985 and 1986.

In 1986, the percentage of pregnancies (abortions plus live births) for D.C. residents terminated by abortion was 50.0,[1] a 1.8 percent increase from the 1985 percentage of 49.1.[1]

The abortion rate (abortions per 1,000 females 15–44 years of age) for D.C. residents increased from 56.0[1] in 1985 to 59.1[1] in 1986, a 5.5 percent increase. This rate had been declining each year from 1980 to 1985. At the same time, the fertility rate (births per 1,000 females 15–44 years of age) has increased from 54.5 in 1980 to 59.1 in 1986.

Abortions in the District of Columbia are reported to DHS on a voluntary basis by hospitals and free-standing clinics. Their reports are confidential and DHS does not provide data on individual hospitals and clinics. In 1986, pregnancy termination reports were received from 12 facilities, the 11 facilities that reported in 1985 plus one facility opened by an existing clinic at another location. DHS does not receive reports on abortions performed in physician's offices and those abortions are not included in the 19,642 total. Nationally in 1980, 4 percent of abortions were performed in physician's offices. If it is assumed that 4 percent of abortions in D.C. were performed in physician's offices in 1986, the total number of abortions performed that year would be 20,773.

Tables 2—11 show the frequency distributions of various items. Cross tabulations of these items are not possible with the current reporting system as data are now reported in an aggregated form rather than on each individual abortion. Some items of interest are:

Half of the women obtaining abortions in D.C. were residents of the District of Columbia and slightly more than one-third were residents of Maryland.

Of the abortions reported in the District in 1986, 23.6 percent were to women under 20 years of age and 54.4 percent were to women under age 25. According to a report by the National Center for Health Statistics,[2] 25.5 percent of the abortions in 1983 reported by 13 states were to women under age 20 and 59.7 percent were to women under age 25. In 1986, 24.4 percent of the D.C. residents obtaining abortions in the District of Columbia were under 20 years of age and 53.9 percent were under age 25.

Approximately four-fifths (81.6 percent) of the women obtaining an abortion in D.C. were not currently married and two-thirds (68 percent) had never been married. In the NCHS report, 78 percent of the women were unmarried.

In D.C., 50.6 percent of the women obtaining abortions in 1986 reported they had not had a prior abortion while the NCHS report showed 60.5 percent of the women had no prior abortion. Almost one-fifth (19.0 percent) of the women receiving abortions in D.C. in 1986 reported having had two or more previous abortions. The percentage of women reporting one or more previous abortions decreased in the District of Columbia in 1986 after increasing steadily for many years as shown below:

Year:	*Percent reporting previous abortions*
1986	49
1985	54
1984	48
1983	47
1982	44
1981	38
1980	32
1974	21

Most of the women receiving an abortion in D.C. (97.4 percent) were outpatients and suction curettage was the primary method of abortion in 97.1 percent of the cases.

60.7 percent of the D.C. abortions were under 9 weeks gestation and 92.2 percent were less than 13 weeks gestation. The NCHS report shows 48.7 percent under 9 weeks and 90.1 percent less than 13 weeks gestation.

Less than 1 percent of the abortions had complications both in D.C. in 1986 and in the NCHS report. Only 27 women (0.2 percent) receiving abortions in the District of Columbia in 1986 were reported to have been hospitalized due to complications resulting from their abortions.

The voluntary system of reporting abortions results in incomplete reporting and therefore incomplete statistics. DHS is recommending mandatory reporting of all pregnancy terminations. More than two-thirds of the states currently require the reporting of abortions.

DHS is absolutely committed to the principles of confidentiality and protecting each individual's right to privacy. It is recommended that the National Center for Health Statistics' U.S. Standard Report of Induced Termination of Pregnancy be utilized to collect abortion data in the District of Columbia. This report does not require the reporting of patients' names or any other information which would threaten their privacy. Mandatory reporting of pregnancy terminations will enable DHS to better inform the public on trends in births and abortions and will improve the department's ability to plan the delivery of health and family planning services.

TABLE 1.—INDUCED ABORTIONS: TOTAL AND D.C. RESIDENTS, 1973–86

Year	Abortions	
	Total	D.C residents
1986	19,942	9,517
1985	19,541	8,627
1984	23,132	11,266
1983	22,867	11,775
1982	24,207	12,350
1981	25,952	13,014
1980	27,183	13,809
1979	28,694	13,611
1978	29,786	13,350
1977	29,545	12,718
1976	31,407	12,954
1975	31,519	13,621
1974	33,010	12,080
1973	40,812	10,019

TABLE 2.—ABORTIONS BY RESIDENCE, 1986

Residence	Number	Percent
Total	[1]18,927	100.0
District of Columbia	9,517	50.3
Maryland	6,532	34.5
Virginia	2,537	13.4
Other	341	1.8

[1]Does not include 1,015 abortions with unstated residence.

TABLE 3.—ABORTIONS BY AGE AND RESIDENCE, 1986

Age (in years)	Total	District of Columbia	Maryland	Virginia	Other States	Not stated
Total	19,942	9,517	6,532	2,537	341	1,015
Under 15	284	173	91	11	8	1
15 to 19	3,959	1,967	1,320	581	87	4
20 to 24	5,534	2,585	2,028	794	118	9
25 to 29	4,511	2,335	1,545	565	64	2
30 to 34	2,358	1,106	872	339	38	3
35 to 39	1,109	500	437	165	7	
40 to 44	199	89	76	29	5	
45 and over	13	8	4	1		
Not stated	1,975	754	159	52	14	996

TABLE 4.—ABORTIONS BY MARITAL STATUS, 1986

Marital status	Number	Percent
Total	[1]17,542	100.0
Never married	11,932	68.0
Currently married	3,230	18.4
Divorced	1,155	6.6
Separated	1,142	6.5

[1]In these computations 1985 and 1986 "not stated" cases were distributed according to the proportion of reported residence.

[2]National Center for Health Statistics: *Induced Terminations of Pregnancy: Reporting States, 1982 and 1983.* Monthly Vital Statistics Report, Volume 35, No. 3, Supplement, July 14, 1986.

TABLE 4.—ABORTIONS BY MARITAL STATUS, 1986—Continued

Marital status	Number	Percent
Widowed	83	0.5

[1]Does not include 2,400 abortions with unstated marital status.

TABLE 5.—ABORTIONS BY RACE, 1986

Race	Number	Percent
Total	[1]18,044	100.0
Black	11,298	62.6
White	4,868	27.0
Other	1,878	10.4

[1]Does not include 1,898 abortions with unstated race.

TABLE 6.—ABORTIONS BY NUMBER OF PREVIOUS ABORTIONS, 1986

Previous abortions	Number	Percent
Total	[1]17,039	100.0
None	8,620	50.6
One	5,182	30.4
Two	2,256	13.2
Three or more	981	5.8

[1]Does not include 2,903 abortions with unstated number of previous abortions.

TABLE 7.—ABORTIONS BY TYPE OF PATIENT, 1986

Type	Number	Percent
Total	[1]18,949	100.0
Inpatient	494	2.6
Outpatient	18,455	97.4

[1]Does not include 993 abortions with unstated type of patient.

TABLE 8.—ABORTIONS BY PRIMARY METHOD, 1986

Primary Method	Number	Percent
Total	[1]18,454	100.0
Suction curettage	17,925	97.1
Sharp curettage	423	2.3
Saline injection	84	0.5
Other methods	22	0.1

[1]Does not include 1,488 abortions with unstated primary method of abortion.

TABLE 9.—ABORTIONS BY LENGTH OF GESTATION, 1986

Gestation (in weeks)	Number	Percent
Total	[1]18,320	100.0
Under 9	11,128	60.7
9 to 10	4,129	22.5
11 to 12	1,653	9.0
13 to 15	910	5.0
16 to 19	472	2.6
20 or more	28	0.2

[1]Does not include 1,622 abortions with unstated length of gestation.

TABLE 10.—ABORTIONS BY COMPLICATIONS, 1986

Complications	Number	Percent
Total	[1]16,184	100.0
Total complications	127	0.8
Resulting in hospitalization	27	0.2
Resulting in death		
Other	100	0.6
No complications	16,057	99.2

[1]Does not include 3,758 abortions where complications were not stated.

TABLE 11.—ABORTIONS BY MONTH, 1986

Month	Number	Percent
Total	[1]19,075	100.0
January	1,663	8.7
February	1,586	8.3
March	1,718	9.0
April	1,691	8.9
May	1,704	8.9
June	1,559	8.2
July	1,723	9.0
August	1,588	8.3
September	1,463	7.7
October	1,563	8.2
November	1,396	7.3
December	1,421	7.5

[1]Does not include 867 abortions performed at one hospital in the District of Columbia in 1986. This hospital did not provide data on the number of abortions performed by month.

Prepared by: D.C. Department of Human Services, Office of Policy and Planning, Research and Statistics Division, 425 I Street N.W., Washington, D.C. 20001 (202) 727-0682

The Department of Human Services does not discriminate on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation or political affiliation.

Mr. HARKIN. Mr. President, I just want to make sure what amendment this is. Is this the reporting amendment?

Mr. HUMPHREY. That is correct.

Mr. HARKIN. This is the amendment that we worked out the agreement on?

Mr. HUMPHREY. That is correct.

Mr. HARKIN. I just want to make one short statement on this.

In accepting this amendment, I want to clarify that the amendment would guarantee the confidentiality of both patients and providers, would not require reports to Congress, would collect only the type of statistical information that is currently useful to the National Center for Health Statistics and that whatever information is collected would be used solely for statistical and medical research purposes. Moreover, I also want to point out that this amendment does not signal the beginning of wholesale congressional involvement in or regulation of the provision of abortion services in the District of Columbia.

The PRESIDING OFFICER. Has the Senator from Iowa concluded?

The Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, both the design and intent are consistent with the stipulation of the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I compliment my friend and colleague from New Hampshire for this amendment.

The PRESIDING OFFICER. Is there any further debate on this amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 2540) was agreed to.

Mr. NICKLES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HARKIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. NICKLES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ARMSTRONG. Mr. President, when a homosexual group asks a Catholic university to provide the homosexuals with university recognition, support, and facilities, it was not a surprise when the university turned down the request. In fact, for the university to do otherwise would have violated the very traditions and values which led to the establishment and operation of the university in the first place.

Indeed, to grant such a request would have been contrary to the deepest and most strongly felt, most ancient and honored traditions which motivated the foundation of the university in the first place.

It is important to keep that in perspective because, like everything else, there are different kinds of universities. There are some which simply arrive out of a desire to provide education. There are others, and the university to which I refer is one of them, which arise, which are motivated by, which are founded because of, which continue in existence because of and with the support of a church or other religious organization motivated by the love of Christ, motivated by a deeply felt, a deeply maintained, strongly supported sense of religious conviction.

Under the circumstance, it is just no surprise that when approached, university officials said to the homosexual group in question, no recognition, no approval, no money, no support; not for an organization which the Church regards as sinful. There is no surprise in any of this.

Nor, Mr. President, should we be too surprised, given the way things go these days, when the group in question went to court. What is surprising, indeed what many legal scholars and others find most perplexing, is the outcome; a major setback for the cause of religious liberty and academic freedom.

I refer to a case which was written about, following a decision of the D.C. court, in the Rocky Mountain News in these terms. The News asked this question:

Can the Government force a religious organization to subsidize practices contrary to its fundamental beliefs? In most of the country, no; in Washington, DC, yes.

The District of Columbia's highest court has upheld a local statute that requires Georgetown University, a Catholic institution, to provide the same "tangible benefits"

to organizations of homosexual students as to other student groups.

The ruling will require Georgetown to give homosexual groups equal treatment when they apply for free mailing services and cash grants from the university's treasury. That treasury, of course, comes largely from students, alumni, and others who believe that homosexual practices are morally wrong and would not have their money support them.

Freedom of speech is not at issue: The homosexuals are already allowed to disseminate their beliefs and even to use the university's meeting rooms. But they insist that those who disagree with those beliefs must not merely tolerate them, but help spread them. It is as if a racist group were to demand subsidies from the NAACP.

The Rocky Mountain News concludes, correctly in my opinion:

This ruling allows one well-organized pressure group to pulverize the first amendment's guarantees of religious freedom. That freedom has to include the right not to support, financially or otherwise, those groups whose views and practices are held to be morally repugnant.

Mr. President, it is that situation which arose unexpectedly that prompts an amendment which I will soon offer. Today in the Nation's Capital, a university which, in the language of the court, has invariably defined itself as a Roman Catholic institution cannot deny its funds, services, or facilities to homosexual student groups even though the Roman Catholic Church, rightly or wrongly, regards homosexual acts as sinful, and Georgetown University regarded the activities of the student groups as inappropriate for a Catholic institution.

The act that was used to compel Georgetown's compliance is the District's Human Rights Act, which provides in pertinent part:

It is an unlawful, discriminatory practice . . . for an education institution to deny, restrict, or to abridge or condition the use of, or access to, any of its facilities and services to any person otherwise qualified, wholly or partially, for a discriminatory reason, based upon the . . . sexual orientation . . . of any individual . . .

Mr. President, there is a higher law at stake here, and that is the first amendment of the Constitution which, as we all recall, points out that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

It is very plain to me, as it is to the Rocky Mountain News and to many other editorial writers, scholars, and thoughtful persons of every persuasion around the country, that what was compelled of Georgetown in the District of Columbia is unconstitutional. I have no doubt that at some point in time it may be struck down by the Supreme Court or another court.

In the meantime, pending that outcome, it is for the Senate to decide the legislative policy. It is well-known and well-established principle that Congress retains the constitutional power to exercise legislation in the District of Columbia. I do not think this Congress is prepared to stand by while the District of Columbia City Council compels a Catholic university to use its funds, services, and facilities for a student organization that is at odds with, that is contrary to, whose very existence is contrary to the reason that the school was founded and the reason for which it continues in operation.

I will just note in passing, not to dwell on it, that article I, section 8, clause 17, of the Constitution reserves to the Congress the exclusive right to legislate for the District of Columbia. Congress in turn has delegated that power, in part, to the District of Columbia Council and mayor, but Congress retain its full authority, not only under the Constitution, but, indeed, under the Home Rule Act, to implement or change legislation for the District of Columbia.

It is well to remember that in the Home Rule Act itself, Congress unequivocally restated that power. Not that we needed to do so because that is clear from the Constitution, but in the very act of granting home rule to the District of Columbia, Congress enacted the following:

Notwithstanding any other provision of this Act, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by this Act, including legislation to amend or repeal any law in force in the District prior to or after enactment of this Act and any act passed by the Council.

In other words, it is our fundamental right as a matter of law, and it is my conclusion therefore, that it is a matter of duty, for us on extraordinary occasions to intervene even though it is our presumption that we favor home rule. I believe, Mr. President, that when the Council goes so far as to adopt a flagrantly unfair, flagrantly unconstitutional provision such as this, the Senate has little choice but to act.

Mr. President, here are the facts which bring this into perspective: The Georgetown case began 8 years ago, and it has, I would note, consumed literally thousands of hours and hundreds of thousands of dollars. Last fall in the case of the Gay Rights Coalition of Georgetown University Law Center versus Georgetown University, the District of Columbia Court of Appeals held that the university did not have to grant university recognition to homosexual students, did not have to grant what they termed "UR," university recognition, but they had to give everything else. The court summarized its opinion in this way:

The Human Rights Act—

referring, of course, to the District of Columbia Human Rights Act—and I stress that what we are talking about here and the matter to which my amendment is directed is an act of the D.C. City Council, not any statutory enactment of the United States——

The Human Rights Act does not require a grant of university recognition because in the particular scheme at Georgetown University that status includes a religiously-based endorsement of the recipient student group. But the Human Rights Act does demand that Georgetown make its facilities and services equally available without regard to sexual orientation. Those facilities and services include tangible benefits that come with university recognition.

Mr. President, since its founding in 1789, Georgetown University has been a Catholic university. All of its presidents have been Roman Catholic clergymen. Some of the opening words from its undergraduate bulletin are as follows:

Georgetown is committed to a view of reality which reflects Catholic and Jesuit influences. As an institution that is Catholic, Georgetown believes that all men are sons of God called to a life of oneness with him now and in eternity.

Mr. President, let me digress for a moment to point out I am not a Catholic. The university is a Catholic university. It has its roots and traditions not only in the Catholic Church but in the Jesuit order. It seems to me particularly appropriate and fitting that someone who is not a Catholic should arise to defend the rights of this church to the free practice of its religious beliefs, which at least in some part, though not in this particular, are different than my own.

Religious belief, I should also point out, is not relevant to admission at Georgetown, although undergraduate students at that university are required to take two courses in the theology department. Faculty members need not be Roman Catholic.

Now, it is the position of the university and the Roman Catholic Church on the question of homosexuality and recognizing the homosexual student groups is captured in the following statements. Each is taken from the opinion of the District of Columbia Court of Appeals. First, may I quote Father Timothy S. Healy, president of Georgetown University, who said that based upon his understanding of student groups:

The University's official recognition and endorsement of these organizations would be contrary to and in conflict with the traditional and consistent teachings of the Roman Catholic Church on the question of human sexuality. Organizations such as those at issue, which are based on a view of human nature which emphasizes the sexual aspects of human nature as dominant to the exclusion of other values, and which encourage and foster homosexuality are totally incompatible with the teachings of the Roman Catholic Church on human sexuality, teachings which are central to the belief of Roman Catholics.

Now, President Healy continued:

The statement that stopped me most was the homosexual student group's stated commitment to "the development of responsible sexual ethics consonant with one's personal beliefs."

Under Roman Catholic doctrine sexual ethics are not a question of personal belief.

The university cannot make that statement about any area of front line morality without insisting upon the objectivity of moral fact and that it is not left strictly to individual determination within any context which can be reasonably read as Catholic.

Rev. Richard J. McCormick, Georgetown's theological expert, testified to the same effect. He said that a Roman Catholic university "has a duty to act in a way consistent with—Roman Catholic—teachings and not to undermine them in its public policies." Therefore, he said, "In its public policies and public acts," the university "ought not to adopt a public policy of explicit endorsement or implicit endorsement" of, for example, abortion, premarital intercourse, or homosexual conduct. Georgetown should not "in its public actions, policies, decisions, take a position that would equivalently establish another normative lifestyle as equally valid with the one that is taught by the Church.

Father Healy said the "moral norms" of the Church:

would be more binding on institutions which have to act publicly and where there is an added moral consideration of leading others astray or giving scandal in the technical sense of the word so that the binding authority of Roman Catholic teaching on an institution would at least in that dimension be greater than it would on an individual.

Now, Mr. President, in spite of the positions of the Roman Catholic Church and the university, Georgetown is now required to provide benefits to these student organizations. I think it is worth noting that prior to this enforcement, homosexual groups on campus already had the right to use university facilities. They already had the right to apply for lecture fund privileges, the right to receive financial counseling from the Student Activities Commission Comptroller, the right to use campus advertising, and to petition to receive assistance from student government. But the homosexual groups were not satisfied. They wanted to receive what Georgetown calls "university recognition." "University recognition" entitles a group to four additional benefits; namely, the use of a mailbox in the Student Activities Commission office, and to request one at Hoya Station. Second, the use of a computer label service. Third, the use of mailing services, and fourth, to apply for funding.

Georgetown, as I have already explained, properly refused to grant "university recognition." Now, as I mentioned at the outset, the court did not order Georgetown to grant what it termed UR, university recognition. It said, correctly in my view, that this would have impermissibly required Georgetown to approve or endorse those views which in fact it opposes. But although the university was not compelled to give its stamp of approval, it was required to give these student groups every tangible benefit that comes with "university recognition."

Let me again quote from the opinion of the university:

The Human Rights Act does not require a grant of "university recognition" because, in the particular scheme at Georgetown University, that status includes a religiously based "endorsement" of the recipient student group. But the Human Rights Act does require that Georgetown make its "facilities and services" equally available without regard to sexual orientation. Those "facilities and services" include the tangible benefits that come with "university recognition."

The consent order between Georgetown University and the student groups requires that Georgetown "shall provide the plaintiff organizations—that is to say, the homosexual groups—with equal access to the tangible benefits now made available by the university to other student organizations.

In short, Mr. President, the court did not require that Georgetown University say that homosexual organizations at the school have the status of university recognition but did compel the school to treat them as if they had that recognition. All tangible benefits that are available to any other student group must now be granted to homosexual student groups. They get the money, the facilities, the services. All they do not get is the UR, university recognition.

Mr. President, the issue here is not whether you think such a student group should in fact have such facilities. as I pointed out earlier, this group, the group that was the plaintiff, already had access to the public forums of Georgetown University, to its meeting rooms and many other facilities. The question is whether or not this university, which for hundreds of years has been rooted in an historic religious faith, should be required to provide facilities and services to pay the light bills for, even perhaps to provide funding for, a group which is anathema to its stated purpose.

I think that is a pretty clearcut issue, Mr. President. It is for that reason that I will shortly send an amendment to the desk.

Congress is the ultimate authority for the District of Columbia. Current law commands a religious affiliated school to recognize these groups. The amendment which I will seek to offer simply overturns that. I trust this will be to the liking of a majority of my colleagues.

Mr. President, my initial thought was to offer an amendment which would broadly say that it would not be unlawful under the D.C. code for any educational institution affiliated with a religious organization or closely associated with the tenets of a religious organization to deny, restrict, abridge or condition the use of any fund, service, facility or benefit for the granting of any endorsement, approval, or recognition to any persons which are organized for, or engaged in, promoting, encouraging, or condoning any act, lifestyle, orientation, or belief that is contrary to or inconsistent with the doctrine, tenets, or precepts of a religious organization.

Upon reflection I have decided to offer a more narrowly defined amendment. I believe the amendment I had in mind originally, which I discussed with a number of Members, was a proper one. I believe it is the correct policy for the District of Columbia, and in fact I think it is really the first amendment of the Constitution, but it occurs to me that were I to offer such an amendment it would be somewhat more broad than is actually necessary to address the specific problem that has arisen in the District of Columbia.

So I am going to yield the floor now. I think in a moment a member of my staff will be here with a more narrowly-drawn amendment which at least I want to look at as a possible alternative to my original thought.

The reason I do so is this: I anticipate that whatever amendment I offer somebody is going to stand up and say, well, home rule is the big issue here. I do not think home rule is the issue. We quite regularly make decisions which are contrary to our general presumption in favor of home rule. In fact, I believe that we have just agreed to do so a moment ago with respect to residency.

Mr. HARKIN. If I might interrupt the Senator——

Mr. ARMSTRONG. Perhaps I could have a brief time to sum up and I would be happy to yield or yield the floor.

Mr. HARKIN. I want to ask a question about the procedure of time.

Mr. ARMSTRONG. Give me perhaps a minute more and then I would be happy to coordinate the schedule.

I anticipate when the amendment is offered the home rule strawman will be erected but clearly that is not a determinative—well, it is dispositive of the issue because just a moment ago or half-hour ago the Senate adopted an amendment which is in effect legislation in the District of Columbia having to do with residency. Nonetheless, it seems to me on an issue where we have a sensitive matter, a first amendment matter, a religious liberty matter, an academic freedom issue,

that there is a lot to be said for being as precise as we can.

I would personally not be uncomfortable just to say if a group seeks facilities or funding or rooms or whatever from a university or a church, and the group's purpose, aims, and goals are contrary to the legitimate tenets of that religion that they should not be forced to provide money or services.

I think I will offer instead an amendment more narrowly focused specifically on the question which has arisen which is homosexual groups. So that will be my proposal I believe. And I will firm that up within a very few minutes when I have had a chance to review the latest draft of the amendment.

Mr. President, I am now prepared to consult with the manager of the bill about the schedule. As far as I am concerned this need not take long. There is no reason to drag it out. I think the issue is pretty clear and it would be my hope that it would be acceptable perhaps to all Senators or certainly to the vast majority of Senators.

Mr. HARKIN. If the Senator will yield for a question without losing his rights to the floor, I would like to inquire of the Senator how soon he might lay down the amendment and how much longer he would take.

It appears that there will be probably two votes on this bill. I do not know whether we will have a vote on final passage or not. Certainly this Senator would not insist on it. I assume that the Senator from Colorado would want to take his amendment to a vote. So again I would just alert other Senators that we have at least one vote pending, and probably maybe two votes pending.

This is the last amendment under the unanimous-consent agreement that will be allowed on this bill. So no other amendments will be allowed on this bill.

Mr. ARMSTRONG. Mr. President, would the Senator yield on that point?

Mr. HARKIN. Yes.

Mr. ARMSTRONG. I am not aware of such a unanimous-consent agreement. Could I know the nature of the UC that has been entered into?

Mr. HARKIN. Last evening a unanimous-consent agreement was entered into by the distinguished majority leader that limited the number of amendments to those enumerated at that point by the majority leader, but there were no time agreements entered into. But there was a unanimous consent on the number of amendments. The amendment of the Senator from Colorado was included in that unanimous consent.

Mr. ARMSTRONG. Mr. President, I do not want to quibble about it. That was not exactly my understanding. It may not make any difference. Let me note in passing that was not exactly the way I understood what was agreed to. But unless an issue arises, I will not quibble about it. I thought the subject matter was limited, but not to a specific amendment.

Mr. HARKIN. It was not a specific amendment. There was an amendment to be offered by the Senator from Colorado.

Mr. ARMSTRONG. Or "amendments." I do not think a unanimous-consent agreement was entered into that would limit the number of amendments.

Mr. HARKIN. Oh, yes. The Senator from Colorado's amendment or any amendment thereto. The second-degree amendments are in order on that amendment.

Mr. ARMSTRONG. Mr. President, as long as we are pinning that down, I do not think an issue of that nature will arise, but could the Chair point out where that appears? I am looking through the list of unanimous consents in the calendar. I have not come across it yet.

The PRESIDING OFFICER. The agreement the Senator is alluding to is not reproduced on the calendar.

Mr. ARMSTRONG. I beg the Chair's pardon.

The PRESIDING OFFICER. The agreement alluded to by the Senator from Colorado is not reproduced on the calendar.

Mr. ARMSTRONG. Rather than drag it out, let us assume it is not going to be a problem. But if it is, we will see what happens.

Mr. HARKIN. I do not think it will be a problem. Again I want to know about time. About how much time are we looking at here?

Mr. ARMSTRONG. Mr. President, I do not think very long. Let me suggest we proceed in the following manner. Why do I not send the amendment to the desk now? The reason I intend to be a little flexible as to whether I may offer more than one amendment is I want to be sure everybody has their say on this issue. So a premature tabling motion or something of that kind would prompt me to offer additional amendments. Assuming nothing like that occurs, I will send the amendment to the desk and let everybody have their say. I do not think it will take much longer to dispose of the issue.

Mr. HARKIN. It is this Senator's intention to move to table, but not certainly to cut off anybody's debate on that at all. I certainly do not want to do that. At some point, I will move to table.

Mr. ARMSTRONG. Mr. President, staff advises me that in some informal consultation with the Parliamentarian there is a notion that if I send an amendment to the desk it would not then be subject to modification or that additional amendments that I might wish to send would not be in order.

I would like to clarify that is not the case. That is not my recollection or understanding of the consent agreement. I do not have any reason to wish to modify this after I send it. But neither am I comfortable to be in the position of having such a restriction.

The PRESIDING OFFICER. The Senator has a right to offer a second-degree amendment to his own first-degree amendment.

Mr. ARMSTRONG. Or to offer additional amendments on this subject?

The PRESIDING OFFICER. Not additional first-degree amendments.

Mr. ARMSTRONG. Mr. President, I will review the RECORD of last night's proceedings. I was on the floor when this matter was under discussion. I had advised the leadership on our side of my wish to be protected, and I thought it was perfectly plain to everyone involved that while I do not intend necessarily to offer multiple amendments on this subject that I wished to be protected in my right to do so. I will be greatly disappointed if that becomes necessary. I shall be even more disappointed if I am precluded from doing so by unanimous-consent agreement. But particularly in the light of what happened on the Warner-Trible amendment and some other amendments around here, I do not want to get boxed into a situation where my right to perfect an amendment and to have it offered in a form in which I wish to offer it is circumscribed. I am not playing games, but neither am I willing to be the victim of some arbitrary parliamentary procedure.

I assure the manager that I do not want to delay but want to expedite the proceeding.

I yield the floor.

Mr. HARKIN. Mr. President, there is no amendment at the desk?

The PRESIDING OFFICER. The amendment has not been sent to the desk.

Mr. SIMON. Mr. President, while there is no amendment pending, let me address in general the earlier amendment offered by the Senator from Colorado.

I think the principles are fairly clear. Frankly, I do not know the details of the case of Georgetown University that he talks about. I have great respect for Georgetown. In a moment of generosity some years ago, they gave me an honorary doctorate, and it is a fine school. My daughter went to Georgetown University Law School.

I think there are two questions at issue here, however. One is the home rule question. Meaning no disrespect to the Senator from Iowa [Mr. HARKIN] or those involved in working out that residency compromise, if that had come to a vote, I would have voted against it. I think we have to let the

District of Columbia and Chicago and Denver and Des Moines and every other city in this Nation run their own business. Every time we become enmeshed in trying to run the city here, we do not act as we should.

There is a second question, and I do not have the second amendment here. But we ought to be very careful when we get into first amendment areas in this body. My friend from Colorado said he is confident that the courts ultimately will reverse that lower court decision. Let us let the courts decide this issue. Let us not get ourselves enmeshed in this.

The original amendment is so broad and sweeping that, frankly, it would reverse the Bob Jones University decision, and I know that is not the aim of my colleague from Colorado. I think that, in general, we have to be very careful when we get into these first amendment areas; and, in general, we are wise to let the courts decide. We do not have the ability to move in and deal deftly. We deal with a sledgehammer and an ax. The courts can deal with a scalpel, and that is the much preferred course. I say this without having the second amendment that my friend from Colorado has.

Mr. ARMSTRONG. Mr. President, if the Senator will yield, I would like to send him a copy of the amendment, which is changed in some measure. I think the staff is delivering a copy of it right now.

I point out to the Senator that he is mistaken in two points he has raised about the original. This is not like the Bob Jones case. The amendment I propose requires an amendment to the D.C. Code. It does not touch any constitutional or Federal statutory enactment. Of course, it was Federal statute and U.S. Constitution that were applicable to the Bob Jones case.

Neither my original amendment nor my latest version of the amendment relates to this at all. Anything to do with Federal civil rights acts is untouched by this. Anything to do with equal opportunity acts and anything to do with laws of general applicability throughout the Nation would not be affected by this matter.

Second, I believe that the Senator may have misunderstood somewhat my observation about the probable outcome in court. Let me elaborate.

While I believe that the D.C. ordinance is unconstitutional, I did not say I was confident that the court would overturn this enactment, but that it may do so. That is a crucial distinction. The reason why I say it may never do so is that it may never go further.

Already, a second university in the District of Columbia is being asked to capitulate; and as it considers whether or not it also will give in to a demand for facilities from a group which it abhors, it is conscious of the fact that Georgetown has spent hundreds of thousands of dollars and experienced a process of bitter divisiveness, lasting over 8 years, on this subject.

The injustice may be perpetuated because the hurdles are so high and the costs are so great to set the matter right. We can set the matter right here today, but for the university to do so might require millions of dollars and many years of effort.

Mr. SIMON. I think that, in general, we are better off letting the courts make these determinations.

I have not had a chance to read the Senator's second amendment; but there is no question that if Bob Jones University had been in the District of Columbia, the first amendment would have reversed the Bob Jones decision if the court would have upheld it.

Mr. ARMSTRONG. Mr. President, the Senator is correct in saying that I have no intention of getting into the Bob Jones controversy. But I point out that that case was not brought under a D.C. ordinance. If Bob Jones University had been situated in the District of Columbia, it still would not have been brought under the D.C. city ordinance, or it would not have to, because the same laws which are of general applicability to South Carolina, Illinois, or Colorado apply to the District of Columbia.

What we are talking about here is a particular ordinance which applies nowhere else, but if it did, it would be equally offensive.

If the Senator believes in some way that we would be dealing with the Bob Jones case or the Grove City case or something else, I wish he would explain it further. Those are governed by Federal statute.

Mr. SIMON. I understand.

My point is simply that had the Senator's original amendment applied here—and I recognize fully that that is not the intent in general—but had it applied and had the courts ruled that that was applicable, the Bob Jones case would have been reversed.

However, I get back to my original premise, and that is that this body gets into this in gun control and abortion and residency requirements for police officers. We ought to let the District of Columbia run its own business. We do not do this for the city of Chicago. I see my distinguished colleague, Senator DIXON, presiding. We do not do this for Des Moines. We do not do this for Denver, CO. We ought to let the District of Columbia run its own government, period. That is really very fundamental.

I yield back my time, Mr. President.

The PRESIDING OFFICER. The Senator from Illinois yields the floor.

The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, I hope the Senator from Illinois will not leave the floor, but he yielded the floor, because whether the Senator ultimately decides to support my amendment or not, and I hope he will, it would be important I think for us to have a meeting of the mind on the Bob Jones case.

Let me just dredge up, and I have to do so from memory, because I have not researched it recently, but I think I have in mind what the facts are. In the Bob Jones case the issue, as I recall it, was whether or not Bob Jones University was entitled to certain preferences under the Internal Revenue Code, and the university, as I recall it, raised a first amendment defense which in the final analysis I think was not successful

This is the part I want to be clear with the Senator on for a lot of reasons, not just because it is important that the legislative record be clear, but that I want the air to be clear between us: my amendment does not touch the Internal Revenue Code. It does not touch any Federal statute other than this appropriation bill which is before us. So every protection of civil rights acts, revenue code, minimum wage laws, OSHA, EPA, whatever it might be which now exists or which might in the future exist in Federal or State law or in the U.S. Constitution or the constitution of any State would be completely and wholly unaffected by my amendment. My amendment would have nothing to do with either of those things.

Second, and this brings me to the reason that the amendment which I am going to send to the desk in just a moment was redrafted in order to narrow its focus, the specific issue which is addressed here is sexual orientation, which is not now and so far as I know has never been a protected category under U.S. civil rights law. In general, the Federal law is that you cannot discriminate in housing, employment, advancement, and so on, on the grounds of religion, race, sex, so on and so on. There is an enumerated list. But sexual orientation, that is to say, homosexuality or heterosexuality, has never been a protected category so far as I am aware. That is important to keep in mind because that is a controversial issue.

There are some people, perhaps some in this Chamber, who like to add that to the list of protected categories and at some point we may debate that issue, but it has never been in the past.

So in drawing my amendment as I have it seems to me that we have completely dismissed that particular area of potential controversy.

AMENDMENT NO. 2541

(Purpose: To help secure religious liberty and academic freedom within the District of Columbia)

Mr. ARMSTRONG. Mr. President, with that word of explanation, I do send the amendment to the desk. It is brief and therefore I would ask that

the clerk read it in full so that those Senators who may be following this debate in their office will understand what it is about.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk read as follows:

The Senator from Colorado [Mr. ARMSTRONG] proposes an amendment numbered 2541.

At the appropriate place in the act, insert the following:

"NATION'S CAPITAL RELIGIOUS LIBERTY AND ACADEMIC FREEDOM ACT

"SEC. . (a) This section may be cited as the "Nation's Capital Religious Liberty and Academic Freedom Act".

"(b) None of the funds appropriated by this Act shall be obligated or expended after December 31, 1988, if on that date the District of Columbia has not adopted subsection (c) of this section.

"(c) Section 1-2520 of the District of Columbia Code (1981 edition) is amended by adding after subsection (2) the following new subsection:

"'(3) Notwithstanding any other provision of the laws of the District of Columbia, it shall not be an unlawful discriminatory practice in the District of Columbia for any educational institution that is affiliated with a religious organization or closely associated with the tenets of a religious organization to deny, restrict, abridge, or condition—

(A) the use of any fund, service, facility, or benefit; or

(B) the granting of any endorsement, approval, or recognition, to any person or persons that are organized for, or engaged in, promoting, encouraging, or condoning any homosexual act, lifestyle, orientation, or belief.'"

Mr. ARMSTRONG. Mr. President, what we have here is a very narrowly defined amendment. It would be proper to go much further, but it is prudent to narrow the focus to facts which are real and not theoretical, to abuses which have actually occurred, to a problem that has actually arisen and been unsatisfactorily resolved.

Mr. President, I want to have printed in the RECORD an article from the Washington Times, February 25, 1986, by Philip Gold who is a history teacher in Georgetown University, in which he tells some of the background of this matter and makes the point that this is the kind of an issue which should never have arisen in the first place and has prompted an article which as he put it "I never wanted to write."

I have already referred to and I will ask consent that we print the entire text of an editorial from the Rocky Mountain News in the RECORD under headline "Religious Freedom Violated in Ruling," and the News correctly sums up:

This ruling allows a well-organized pressure group to pulverize the first amendment's guarantees of religious freedom.

Also, Mr. President, an editorial from the Richmond Times-Dispatch which in part characterizes the decision which we are seeking to reverse as judicial activism at its worst throwing fundamental legal and constructional doctrines out the window in order to advance a gay rights revolution which the court apparently feels more important than the rules of law as well as constitutionally protected freedom of religion.

Also, Mr. President, an article by William F. Buckley, Jr., which appeared in the Lowell (Massachusetts) Sun on April 8, 1988. I want to read briefly from that article, although I do ask consent that it be printed in the RECORD entirely, because as one would expect, Mr. Buckley's summation of the issue is interesting, compelling, and articulate. Mr. Buckley writes:

And last week, Georgetown University, the oldest Jesuit college in America, capitulated on the lawsuit demanding that it make room within Georgetown for gay and lesbian student federations.

GEORGETOWN DEFEAT

One supposes that Georgetown's administrators would at this point interpose that they did not completely lose the fight. True, Georgetown has not been required by the courts to "recognize" the student homosexual groups. But it is required to give the groups facilities. And, it is conceded, the groups will draw their rations from student funds.

So far as one can discern, Georgetown's victory is limited to the asterisk it is permitted to use in its catalog of student activities after "Lesbian Liberation Front": not officially recognized by the university. To such farthings are the defendants today reduced, if the juggernaut running over them is labeled "civil rights."

Mr. President, I also ask unanimous consent to print in the RECORD an essay by Doug Bandow, senior policy consultant with the Cato Institute, published in the New York (City) Tribune on April 7, 1988. He points out:

Georgetown University takes its doctrine seriously and believes, as do all Bible-based Christian faiths, that homosexuality is wrong.

And he explains in very pertinent and cogent terms that the effect of these D.C. ordinances is to reverse all the Catholic interpretation of God's moral law.

And then the article of Cal Thomas, which appeared in the New York Daily News on December 1, 1987, about the decision in which he quite properly points out it is unappealing and has serious and far-reaching consequences.

Then, finally, Mr. President, I ask unanimous consent that we print in the RECORD from the Boston Pilot a column by Peter J. Ferrara and Joseph E. Broadus, who are distinguished fellows. Peter Ferrara is a distinguished fellow at the Heritage Foundation and a law professor, and also Joseph Broadus is professor at the George Mason School of Law in Virginia.

I do send all of these to the desk and ask unanimous consent they be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Times, Feb. 25, 1986]

GAY RIGHTS AND THE PUBLIC WORLD

(By Philip Gold)

This is a column I never wanted to write. The issue involved—homosexual "rights" at Georgetown University—is a matter perhaps best handled within the university community. As alumnus and faculty member, I would have preferred it that way.

But the issue has long been a matter of public record, and recent events have demonstrated once again the extent to which a university mirrors the larger society. And recent events have also convinced me that no one, on either side, seems willing or able to articulate one of the fundamental issues involved: an inability or unwillingness which also reflects a failure of society.

For years now, a group known as Gay People of Georgetown University has been active on campus. It is one of a number of student groups which, although not formally recognized by the university, are nonetheless permitted the use of university facilities on an *ad hoc* basis. Six years ago, GPGU sued the university under D.C. law in an effort to attain full recognition. The case has dragged on, holding up District financing for needed campus construction.

A few weeks ago, the university denied GPGU permission to hold a "gay dance" on campus, asserting that such an activity would violate both Catholic teaching and the university's Jesuit tradition. On-campus debate turned rather ugly, and a few days later, a homosexual activist unconnected with the university filed a discrimination complaint with the District government, demanding that the entire university be shut down. Said this person in a campus newspaper interview: "If the university persists in its bigotry, it will be a very costly bigotry."

To dispose of the obvious first:

Georgetown University admits homosexual students. It does not expel, suspend, or penalize them for their practices or advocacies. The university also admits Jews, Protestants, Muslims, and atheists, and asks not that they accept Catholicism, only that they respect it. Which means: to regard it with normal courtesy, and to do it no violence.

Further, Georgetown University—indeed, any university—is a voluntary association. No one is compelled to attend and, presumably, students selecting Georgetown are fully aware of its institutional position. (One cannot imagine a freshman at West Point discovering to his or her horror that the place is a *military* academy and then demanding fundamental changes in institutional outlook and policy.)

These three facts of homosexual admission, non-penalization, and requirement for tolerance of Catholic teaching would seem sufficient to dismiss charges of discrimination and bigotry. No one has any "right" to be a college student, just as no one has any "right" to serve in the military, and numerous judges have ruled that, in fundamental matters, the institution's requirements come first. Whether this will be the ultimate decision in the GPGU case remains to be seen.

But there is another, and perhaps greater, issue here—one which nobody seems willing to call by its proper name.

A university, like a society, is not simply a collection of atomistic individuals; it is more than a source of goodies, material or moral. A university, like a society, is, in large measure, a public world: a place of common goals and shared purposes. This public world requires the care of its members, even as they disagree on specific matters.

To our Founding Fathers, the quality of care was known as "civic virtue." To them, civic virtue meant more than sacrifice for the common good. It also entailed a quality known as prudence, the ability to apply general principles to specific cases. Without civic virtue, without prudential wisdom, there can be no stable public world—only an anarchy of competing claims and usurpations. And without a public world there can be no rights.

Georgetown University has demonstrated both civic virtue and prudential wisdom in its handling of GPGU. By allowing the group an *ad hoc* existence, it has acknowledged a campus and American reality, the homosexual movement, and permitted free speech and inquiry on campus. By refusing to recognize the group, and by banning the "gay dance," the university has met its commitment to other members of the university public world, including both the Catholic Church and those students and alumni who might find homosexuality abhorrent. But the university has grounded its refusal too narrowly; it has acted, not just in the Catholic tradition, but in accordance with the spirit of civic virtue and the requirements of prudential wisdom.

GPGU has shown neither civic virtue nor prudence. Its interests do not extend beyond itself, and it has repeatedly indicated its desire to harm the university in any manner available to it, whether lawsuit, publicity, or accusatorial rhetoric.

By casting the issue as entirely one of bigotry and "rights," it has claimed for itself a moral stature which it neither deserves nor has earned.

Whether homosexuality constitutes mortal sin, psychic or genetic disorder, or alternative lifestyle, is not for me to say. What consenting adults do in private is their own affair. But when groups such as GPGU attempt to reduce the public world we share to mere reflections of themselves, or mere sources of self-aggrandizement, then I must both object and deny the legitimacy of their participaton in the public world they value less highly than their whims.

[From the Denver (CO) Rocky Mt. News, Nov. 27, 1988]

RELIGIOUS FREEDOM VIOLATED IN RULING

Can the government force a religious organization to subsidize practices contrary to its fundamental beliefs? In most of the country, no; in Washington, D.C., yes.

The District of Columbia's highest court has upheld a local statute that requires Georgetown University, a Catholic institution, to provide the same "tangible benefits" to organizations of homosexual students as to other student groups.

The ruling will require Georgetown to give homosexual groups equal treatment when they apply for free mailing services and cash grants from the university's treasury. That treasury, of course, comes largely from students, alumni and others who believe that homosexual practices are morally wrong and would not have their money support them.

Freedom of speech is not at issue: The homosexuals are already allowed to disseminate their beliefs and even to use the university's meeting rooms. But they insist that those who disagree with those beliefs must not merely tolerate them, but help spread them. It is as if a racist group were to demand subsidies from the NAACP.

This ruling allows one well-organized pressure group to pulverize the First Amendment's guarantees of religious freedom. That freedom has to include the right not to support, financially or otherwise, those groups whose views and practices are held to be morally repugnant. Let us hope that courts in other jurisdictions will not emulate the D.C. ruling.

[From the Lowell (MA) Sun, Apr. 8, 1988]

ANYTHING GOES IF A "CIVIL RIGHT"

(By William F. Buckley, Jr.)

When the civil rights bills were passed in the mid-'60s, their principal sponsor, Sen. Hubert Humphrey, promised in one melodramatic session that he would "physically eat" the bill he was promoting if ever anyone attempted to use his bill in order to prefer a member of one race at the expense of a member of another race.

Senator Humphrey died from other causes than the food poisoning to which he'd have been subjected after the Supreme Court OK'd affirmative action.

A fortnight ago we had the Civil Rights Restoration Act, which now extends to the federal government the right to inquire into the racial or sexual composition of a school's basketball team if its medical school is receiving federal subsidies. And last week, Georgetown University, the oldest Jesuit college in America, capitulated on the lawsuit demanding that it make room within Georgetown for gay and lesbian student federations.

GEORGETOWN DEFEAT

One supposes that Georgetown's administrators would at this point interpose that they did not completely lose the fight. True, Georgetown has not been required by the courts to "recognize" the student homosexual groups. But it is required to give the groups facilities. And, it is conceded, the groups will draw their rations from student funds.

So far as one can discern, Georgetown's victory is limited to the asterisk it is permitted to use in its catalog of student activities after "Lesbian Liberation Front"; not officially recognized by the university. To such farthings are the defendants today reduced, if the juggernaut running over them is labeled "civil rights."

In 1952 the Commission on Financing Higher Education of the Association of American Universities issued a warning against the dangers of accepting federal funds. "Under federal control, our hundreds of universities and colleges would follow the order of one central institution, and the freedom of higher education would be lost."

PROPHETS OF DOOM

Among the signers of that document were the presidents of Harvard, Johns Hopkins, Stanford and Brown. Those learned gentlemen would take from the situation today whatever satisfaction is desired by prophets of doom. But even so, it is hard to imagine that they'd have foreseen a day in which a federal court instructs a religious institution that it is required to countenance, let alone provide quarters for, groups engaged in promoting activity deemed not only wrong but sinful by the moral architects of that institution.

Those who stress (and restress) the separation of church and state are certainly narrowing the area within which the freedom of religious exercise is tolerated. Perhaps in the storm cellar.

Here is a scenario: A son sues his father for denying him facilities in the home in which to practice homosexuality with a neighbor's son. The ACLU defends the son's freedom on the grounds that the father's house is a beneficiary of a federally backed mortgage, and therefore the civil rights of all its occupants need to be observed.

Lunatic reasoning? Who, 10 years ago, would not have thought it lunatic reasoning that a religious institution dedicated to teaching, among other things, the moral law should be obliged to extend its hospitality to those who seek to flout such laws?

EXPANSIVE REASONING

I observed with fascination, only a week or so ago, the plausibility with which former Sen. George McGovern, as ever on the cutting edge of liberal reasoning, defended the recent civil rights extension. It sounds so reasonable to say that "the taxpayers" do not wish their money to be spent on "any institution" that permits the practice of discrimination.

Discrimination against race, ethnic background, sex and now sexual inclination.

One wonders—I brought this unsuccessfully to the attention of Mr. McGovern—what has happened to the concept of privacy?

Somebody, somewhere, somehow, has got to stop the civil rights thing. It is making a joke out of one after another of our Bill of Rights.

[From the Richmond Times-Dispatch, Mar. 15, 1988]

GROUP RIGHTS ABOVE ALL?

When Congress passed the misnamed Civil Rights Restoration Act the other day, conservatives complained that it could subject private institutions, including religious ones, to stringent federal regulation in the guise of protecting assorted groups from alleged discrimination. A recent decision by the District of Columbia Court of Appeals showed that on a local level, with sweeping anti-discrimination statutes and activist judges to interpret them, such an alarming outcome already is possible.

At issue was the application of the D.C. Human Rights Act to Georgetown University, a Roman Catholic institution. Georgetown had contended that as a religious entity it had a right to limit its recognition and support to those student organizations that it thought would help advance the Catholic faith. Other organizations, including the plaintiff Gay Rights Coalition, would be able to operate freely on campus, but without subsidy from the university.

The Coalition, however, won a verdict from the appellate court (after losing in trial court) to the effect that, by denying free support services to the homosexuals, Georgetown had discriminated against a group on the basis of "sexual orientation," a violation of the Human Rights Act. The court found the district administration's interest in eliminating discrimination against gays more compelling than preserving the unfettered practice of religion at Georgetown. While the gay-rights' group contention that sexual ethics are defined solely by individual preference is baldly contrary to

Catholic doctrine, a Catholic institution now has been ordered to dish out money to support that point of view.

Two professors at the public George Mason University School of Law on the Virginia side of the Potomac, Peter J. Ferrara and Joseph E. Broadus, succinctly characterized the D.C. decision as follows in an article for the Heritage Foundation:

"The Georgetown decision is judicial activism at its worst—throwing fundamental legal and constitutional doctrines out the window in order to advance a gay-rights revolution which the court apparently feels is more important than the rule of law, as well as constitutionally protected freedom of religion."

What is most chilling, however, is the realization how extensively fundamental freedoms in all of America could be eroded by a federal Civil Rights Restoration Act that treats all institutions and people as subject to federal anti-discrimination regulation if even the smallest amount of federal aid can be traced to their operations or activities. Not only churches and church schools but businesses of all sizes, farmers, private clubs and associations, and state and local governments could be adversely affected. The D.C. Human Rights Act shows in microcosm the kind of mischief that the new federal act would encourage. Congress acted ostensibly to overturn the Supreme Court's decision in the Grove City College case, but the legislation goes far beyond that purpose.

President Reagan may veto this threat to exalt group rights at the expense of fundamental American freedoms within the next day or two. For reasons to uphold the veto, members of Congress need not look far.

[From the NY City Tribune, Apr. 7, 1988]

"GAY RIGHTS" RULING PROVES THERE'S NO RIGHT TO BE CATHOLIC

(By Doug Bandow)

WASHINGTON.—There was a time when the First Amendment was thought to protect religion as well as speech. But government officials increasingly seem to think that it means protection from religion. At least, that's what the honorable citizens of our capital must believe.

The District of Columbia has long been noteworthy as the home of a parasitic federal bureaucracy, but the city government is not without its own accomplishments, including a particularly entertaining amalgam of venality and incompetence. And now D.C. can pride itself on forcing a Catholic institution to fund gay activist organizations.

In 1977 the district passed an ordinance forbidding discrimination on the basis of sexual orientation. Naturally no exemption was provided for religious institutions; in this city the government, not God, is considered to be the supreme arbiter of morality.

Located within the capital is Georgetown University, a Catholic school chartered directly by the Vatican. Georgetown takes its doctrine seriously and believes, as do all Bible-based Christian faiths, that homosexuality is wrong.

That doesn't make gays unique, of course: adultery, for instance, is also a sin. But there are as yet no adulterers' organizations demanding official recognition of their members' lifestyle.

There are gay groups, though, and they wanted Georgetown to provide them with office space, support services, funds and access to school facilities. The university, not surprisingly, said no. For to subsidize homosexual organizations would be to support an orientation that violated fundamental Catholics tenets.

So the students, with the support of the D.C. "Human Rights Office"—which believes in protecting everyone's human rights except those of traditional Catholics—sued. And last fall the district's Court of Appeals ruled that Georgetown, while it needn't technically "recognize" the gay groups, had to grant them the same "tangible benefits" that it provided other organizations.

Georgetown decided not to appeal, settling the case on March 29. The school won't have to host gay religious ceremonies or meetings with a largely non-university audience, but Georgetown will still be forced to subsidize gay groups: "We've gotten everything we were looking for" exulted Laura Foggan, an attorney for the plaintiffs.

Moreover, Georgetown agreed to pay its opponents legal fees, which are estimated to run between $600,000 and $900,000. It's bad enough that a religious school has to spend enormous sums of money to defend its right to follow church doctrine. But to require it to pay those who want to deprive it of its religious freedom is scandalous.

The point is, homosexuals have no right to force others to accept or support their lifestyle. Certainly government has no business discriminating against them: Anti-sodomy laws, for instance, are a vicious intrusion in the most intimate form of human conduct. And gays who pay taxes have as much right to government services and employment as anyone else.

But someone who decides to live openly as a homosexual should accept the disapproval of those around him. For many Americans still believe that there is a fundamental, unchangeable moral code by which men are to live.

Vindictive personal discrimination against gays, in contrast to disapproval of their conduct, is wrong and even un-Christian, since Jesus commanded his followers, who are sinners like everyone else, to love their neighbors but it is not a public matter. Using government to bludgeon homophobics into submission is even more intolerant than the original discrimination.

And gays certainly shouldn't expect to be subsidized by those who are offended by their lifestyle. Georgetown's homosexual students may reject biblical teachings, but no one forced them to go there. If they want to attend a university that recognizes their sexual preference, they should have enrolled somewhere else.

Indeed, to show up at a Catholic school and demand that it fund gay activist groups is, well, more than chutzpah. It is both selfish and spiteful, a calculated effort to trample someone else's fundamental beliefs for ideological purposes.

It's too bad that Georgetown decided not to appeal the case. For if the district can force the school to subsidize gay groups, what will be next? Office space for the campus atheists?

"We never intended to discriminate, or break the district law," says one Georgetown official. "We do reserve the right to be Catholic."

But the university's desires in that regard apparently don't matter. For the D.C. government believes that it, not God, is the city's highest moral authority.

[From the NY Daily News, Dec. 1, 1987]

VERY UNAPPEALING DECISION IN D.C. COURT

(By Cal Thomas)

A ruling by a District of Columbia appeals court has threatened an important provision of the First Amendment. The ruling says, Georgetown University, a Roman Catholic institution in Washington, must grant campus homosexual organizations the same access to its facilities and services as every other student group.

The court concluded that the "compelling governmental interest" to end discrimination on the basis of sexual preference superseded Georgetown's freedom-of-religion defense.

Though the 5-2 court majority said that Georgetown was not required to confer "official recognition" upon the homosexual groups, that is mere semantical hairsplitting. The organizations will have the same access to university benefits and services, including the ability to apply for school funds to subsidize their activities, as any other campus group.

The incredible nature of this ruling is compounded by the fact that the District of Columbia has yet to repeal its sodomy law. So how can it be a compelling governmental interest to promote a group in which many members presumably engage in an activity that is a felony in the District of Columbia?

Georgetown is part of a religious institution which teaches that homosexuality is a sin. Thus, the appeals court has managed to violate two laws simultaneously—those of church and of state.

The serious ramifications of this ruling remain to be observed.

What happens if the homosexual groups decide to exercise the right to sponsor a dance for gays and lesbians, as other campus groups do for heterosexual students?

Can the church hierarchy, under whose management Georgetown falls, tolerate such open displays of activity which its doctrines and creed condemn?

And don't expect this case to stop with Georgetown University. Homosexual groups are intent on going further.

Richard Goss, a lawyer for the plaintiffs in the Georgetown case, said the court decision could be a precedent-setting one for other local jurisdictions.

"There are literally hundreds of laws like the District's (Human Rights Act of 1977)," he said. "But there are no federal laws that make discrimination based on sexual preference illegal. Now, where those laws exist, I expect them to be enforced fully, pointing to this decision."

Rulings like this are the product of a flawed view of the law, originating in the so-called "right to privacy" decisions of recent courts. What has been overlooked is that, in order to have meaning, rights must have some reference point and a specific context.

The Founding Fathers discovered that context in the concept of endowment, rejecting the modern view that rights are conceived in the mind of man and can be whatever people want them to be at a given moment.

The effect of this ruling will be to force Georgetown University to subsidize, through the use of its facilities, services and even student activity fees, a pattern of behavior that the Catholic Church finds repugnant.

Not only does this compel Georgetown to violate its conscience, its doctrine and its reason for being, it reaffirms the court in its

modern role as deity and brings to mind a political cartoon. In it, a man watching the news on television hears the newscaster say: "By a 5-4 vote, the Supreme Court today declared itself God."

[From The Boston Pilot, Mar. 11, 1988]

THE CHURCH AND GAY RIGHTS

(By Peter J. Ferrara and Joseph E. Broadus)

Freedom of religion, prominently protected in the Constitution's First Amendment, is certainly among America's most cherished values. Not according to the District of Columbia's highest court, however, which recently ruled (in Gay Rights Coalition v. Georgetown University) that "gay rights" can sometimes be more important than religious freedom.

Georgetown is a Roman Catholic university which, though heavily secular in its course of instruction, still takes seriously its original mission to advance the Catholic faith. Consequently, the school provides university recognition, support services, and funding only to organizations which the school believes help advance Catholic doctrine. Other organizations recognized by the student government can operate on campus, but without subsidies from the university. Most of Georgetown's student groups operate this way.

The case in question involves a gay-rights organization which applied for official university recognition and support. The school denied the application on the grounds that the organization's purpose and activities did not advance the Catholic religion. (The organization was, nonetheless, still free to operate on campus, under its student government charter, as it had for several years.)

The gay-rights group sued the university, claiming that the school's denial of its application for official support discriminated against group members on the basis of their "sexual orientation," in violation of the District of Columbia's Human Rights Act. Ruling in favor of Georgetown, a trial court held that requiring the Roman Catholic school to recognize and support the gay rights group would violate the U.S. Constitution's guarantee of freedom of religion.

The D.C. Court of Appeals reversed the decision, holding that the school's denial of support was based on discriminatory preconceptions about gays, in violation of the D.C. Human Rights Act. The court declared that homosexual orientation tells us nothing about a person's religious abilities or commitments. In other words, the court held that engaging in homosexual conduct has nothing to do with whether one is a good Catholic.

The court recognized that such mandated support would interfere with the university's religious practices. But the court rules that this restriction on freedom of religion is outweighed by the compelling government interest in eliminating discrimination against homosexuals. Consequently, the court held that the mandated support did not violate the Constitution.

The Georgetown decision is judicial activism at its worst—throwing fundamental legal and constitutional doctrines out the window in order to advance a gay-rights revolution which the court apparently feels is more important than the rule of law.

Whether homosexual conduct violates Catholic doctrine is for the Pope to decide, not the D.C. Court of Appeals. The Constitution, and a long line of judicial precedent, absolutely prohibits the government from interfering in questions of religious doctrine.

A statement of purpose for the gay-rights organization indicates that one of its functions is to advocate the view that sexual ethics is defined solely by individual preference. The university considers this view to be flatly contrary to Catholic doctrine.

Indeed, an ugly judgment seems to underlie the court's superficial rhetoric—namely, that Catholic doctrine is "anti-gay" and therefore, ultimately, contrary to sound public policy. To set this straight, the court has intervened in the operations of the Catholic Church, mandating that it provide support for the "socially correct" gay-rights view of sexual ethics.

While the Church is still free to teach its ancient doctrines (at least temporarily), must it now worship the new icons?

Mr. ARMSTRONG. Mr. President, I noted a moment ago that I am not a Catholic but this is not a Catholic issue. Let me say to my Mormon friends that Mormons are not safe if we do not protect the rights of Catholics.

Let me say to my Jewish friends that Jews are not safe if something like this is permitted to happen to a great university which no one accuses of hypocrisy on this issue, which is merely being faithful to the teachings and tradition of its church. If we let this happen to the Catholics, it can happen to the Jews.

Let me remind my friends who are Baptists, who have undergone persecution sometimes in some places that if the Baptists do not stand up to be counted with the Catholics on this issue it is going to happen to me some day and fellow Presbyterians the same.

Even, let me say, Mr. President, to those who do not adhere to a particular organized church who may not even be religious persons, let me say to them your rights are seriously fundamentally compromised by what is happening at Georgetown and Catholic University.

When we force people to violate their most deeply held tenet, tenets which are protected under the religious liberty clause of the first amendment and provide not only support but a form of tacit approval, space in buildings, utilities, services, possibly money, for organizations which are devoted to the exact opposite of what the church and the university stand for, we are treading on very dangerous and sensitive grounds.

So, I say this is not a Catholic issue. This is not an issue just for one church. It is an issue for all of us in this Chamber who honor and defend traditions of religious liberty.

Mr. President, I call for the adoption of the amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HARKIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ARMSTRONG. Mr. President, I understand there are some conferences under way. I will, in a moment, resume the quorum, but I would like to send two additional articles to the desk which I overlooked a moment ago. One is from the Catholic Standard, which I think is particularly significant because it is a publication of the Catholic Church.

I want to sum that article up. In the last paragraph of this editorial from the Catholic Standard it says:

The church teaches that discrimination against homosexuals is morally wrong.

Let me say that again.

The Church teaches that discrimination against homosexuals is morally wrong. They are children of God, with inalienable rights, and at Georgetown they have always had the right to join any of the dozens of campus organizations that are open to all Georgetown students. But last week's appeals court decision seems to be based not so much on what a person is but on what a person does. It will be tragic indeed if that decision establishes legal approval of immoral conduct.

I think that is very, very significant point and I would not want to let this debate conclude without making it.

This is not whether you are for or against homosexual conduct. It is not whether you are for or against homosexuals. The point the Catholic Standard makes is correct.

Sometimes in this body speakers rise and discuss homosexuality in the kind of terms that makes it sound like it is the only sin or that it is the worst sin. Those of us who read the Bible recognize that human beings are subject to all kinds of sins.

It would not be any different, in my opinion, if the group that was seeking the use of Catholic University or a Lutheran university or a Presbyterian seminary's facilities was not a homosexual group but was a group of adulterers. Now, is there such a group? I expect there probably is. I cannot cite it. Is there a group of student witchcraft advocates? Yes, there is. I happen to know that for sure. I am not aware that they have appealed under this D.C. statute for the use of rooms, but it would be a travesty, under those circumstances, to permit them to have access to or subsidies from the facilities of a university supported by and founded by and grounded in the traditions of the church.

But, at the same time, the Catholic Standard is eminently correct in

saying that does not provide an excuse or a justification for the persecution of homosexuals, any more than it provides a similar excuse for those whose moral conduct in other ways is conduct of which the church or some of us as individuals disapprove.

And so the Standard is right on target. I send that to the desk and ask unanimous consent that it be printed in the RECORD, along with a second article from the April 9 edition of Human Events, which sort of provides a summation of what happened up to that point.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Catholic Standard, Nov. 26, 1987]

SCHIZOPHRENIC—GEORGETOWN-HOMOSEXUAL DECISION SEEMS TO HAVE CONFLICTING ELEMENTS

When opposing sides in a lawsuit both claim victory, the court's decision would seem to lack a certain clarity. That would appear to be the case in a ruling Friday by the D.C. Court of Appeals regarding Georgetown University and its involvement, or lack of involvement, with homosexual rights groups on campus.

The case has been slogging through the courts since 1980 when two homosexual rights groups—the Gay People of Georgetown and the Gay Rights Coalition of the Law Center—sued the university after Georgetown denied their applications for official recognition. The charge was that the university was violating the 1977 D.C. Human Rights Law which forbids discrimination on the basis of race, sex and several other categories, including discrimination based on "sexual orientation."

Over the years the courts have alternately supported and rejected Georgetown's assertion that it was denying official recognition because the groups were promoting a lifestyle that is contrary to the teachings of the Catholic Church. Georgetown allowed the groups to meet on campus but refused funding and prohibited the groups from using the university's name on placards and placing literature in general mailings to students.

Friday's decision by the D.C. Court of Appeals said that Georgetown is required to give equal treatment to the homosexual groups, to give the same benefits that other campus organizations receive—but that it does not have to officially recognize the homosexual groups.

Both parties find something to be pleased about in this decision, at least up to a point. Georgetown president Father Timothy Healy pointed out that the court affirmed the university's "right to refuse to endorse moral positions not in accord with its traditions." A spokesman for the homsexual groups hailed the decision as a civil rights victory comparable to the Supreme Court's 1954 Brown v Board of Education decision that struck down racial segregation in public schools.

Father Healy is right to be gratified that the university is not legally required to endorse groups that reject Church doctrine. This is a matter of great importance. But the appeals court decision seems schizophrenic. It says that as a Catholic university Georgetown can disassociate itself from campus groups that promote a lifestyle that the Church has always and unequivocally taught is morally wrong. Yet it also says that the university is legally bound to grant benefits to these same groups, benefits that will assist them in advocating behavior that the university and the Church hold to be immoral. To put it mildly, this appears inconsistent.

The Church teaches that discrimination against homosexuals is morally wrong. They are children of God, with inalienable rights, and at Georgetown they have always had the right to join any of the dozens of campus organizations that are open to all Georgetown students. But last week's appeals court decision seems to be based not so much on what a person is but on what a person does. It will be tragic indeed if that decision establishes legal approval of immoral conduct.

[From Human Events, Apr. 9, 1988]

GEORGETOWN FAILS TO EXERT RELIGIOUS RIGHTS

Georgetown University (G.U.) last week decided against appealing to the Supreme Court a controversial case involving 1st Amendment religious freedoms, thus letting stand a lower court ruling that the Roman Catholic university would have to subsidize homosexual student activities, even though Catholicism holds homosexual behavior to be sinful (see Human Events, March 12).

G.U.'s decision not to take the case to the Supreme Court marks the end of a long, eight-year legal battle in which homosexual student groups claimed the university had illegally discriminated against them by not granting the groups official university recognition and the material benefits that accompany such recognition.

Under Washington, D.C.'s Human Rights Act, discrimination based on homosexual orientation is forbidden, thus giving homosexuality the same status as race and religion in civil rights cases. Georgetown University all along maintained it had not violated this statute because as a Catholic institution it could not be forced, under the 1st Amendment's free exercise of religion clause, to either endorse or subsidize any group promoting homosexual behavior.

In a remarkable and controversial decision, D.C. Appeals Court Judge Julia Mack said that although the 1st Amendment protected the university from having to endorse or approve of the group's activities, it nonetheless had to provide those groups with funds and other tangible benefits. By not having done so, Mack claimed, the university violated the D.C. statute, the 1st Amendment notwithstanding.

The University then had the choice of taking its claims of religious freedom to the Supreme Court. But according to university spokesman Gary Krull, the university's position was that "If an agreement, acceptable to both sides could be negotiated and endorsed by the court, then that was a better way to go than to go to the Supreme Court."

It is difficult to see, however, how the university found acceptable the consent order it entered into with the homosexual student groups, thus foreclosing a Supreme Court appeal.

The order does allow the university to require the homosexual groups in question to print on all their official communications that their views are not endorsed by Georgetown. The order also does not require the university to provide benefits to the groups for religious worship or ceremonies, thus letting stand a decision by the university to prohibit the so-called "Catholic" pro-homosexual group Dignity from conducting religious services in university churches.

But that's about it. Georgetown claims it won as much as the homosexual student groups did in this case, but the consent order tells a different story.

For instance, Georgetown agreed to pay legal fees for the homosexuals who brought the case. In so doing, G.U. conceded, in the words of the court order, that "the plaintiffs [i.e., the homosexual student groups] are the prevailing parties by virtue of their success on a significant issues [sic] in the case." Those legal fees, according to one attorney to the plaintiffs, could amount to between $600,000 to $900,000.

Furthermore, in signing the order, the university admitted, contrary to what it had been arguing for the past eight years in court, that they had indeed violated the D.C. Human Rights Act by not subsidizing the activities of the homosexual groups. In so doing, G.U. all but conceded it had no valid 1st Amendment claims to challenge the local statute forcing it to act contrary to its religious convictions.

According to Joseph Broadus, an assistant professor of law at Virginia's George Mason University who has followed this case closely, "Georgetown had a religious duty and a moral duty of citizenship of challenge this really bizarre court ruling."

But in refusing to carry out this duty, Georgetown is letting stand unchallenged a potentially disastrous precedent for future 1st Amendment cases involving claims of religious freedom.

Already, numerous city and local governments have passed "homosexual rights" legislation similar to the D.C. statute and Democrats in Congress, as well as all of the Democratic presidential contenders, want to see such legislation enacted into federal law.

The D.C. Appeals Court decision, now left unchallenged by Georgetown's failure of nerve, sets the precedent that there are no valid constitutional claims under the 1st Amendment that religious believers can raise in court to challenge laws that would force them, against their religious convictions, to act in a neutral way toward homosexuality.

Mr. NICKLES. Mr. President, will the Senator yield for a comment?

Mr. ARMSTRONG. Yes, I am happy to yield to my friend from Oklahoma.

Mr. NICKLES. If I understand the Senator's amendment, he is trying to address a problem—and I apologize; I missed a great deal of the Senator's debate—but he is trying to address the situation that arose because of a contested court case which, basically, forced Georgetown University to provide access, meeting rooms, to a gay rights advocates' group; is that correct?

Mr. ARMSTRONG. Yes, the Senator is correct in spirit, though in detail I might note that the groups in question already had access to university facilities. The specific question was whether or not they would be granted university recognition, which carries with it the right to a post office box and some funding and things like that. The Court said no, the university does not have to grant official recognition, but must give all tangible benefits that

accompany such recognition. And so it is really a case of compelling a church-related university to give support, to pay the light bills for, in effect, an organization which is anathema to its fundamental teaching.

Mr. NICKLES. I appreciate the Senator's clarification. I compliment him on his amendment.

I was appalled by that court decision and, really, somewhat incensed by the fact that maybe the enacting legislation by the D.C. Council would bring it about or maybe the groups, in their aggressiveness, would try and bring this about and basically force a private institution to do things that are really totally against its basic tenets.

So I compliment the Senator from Colorado.

Mr. ARMSTRONG. I appreciate the kind words from the Senator from Oklahoma.

Mr. President, I am ready to go to a vote, but I think perhaps others are not. So, pending the decision of the leadership on when we are ready to vote, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SIMON). Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I rise in opposition to the amendment. I do not mean to talk a long time about it but I do want to quote a couple of letters and a communication that we received from Georgetown University and print some things in the RECORD.

Mr. President, we have received a communication from Georgetown University that reads as follows:

Georgetown University Statement Regarding Senator Armstrong's Amendment.

Georgetown University's legal counsel was informed late Wednesday, July 6, by Senator Armstrong's office, that the Senator planned to introduce this amendment to the D.C. appropriations bill. Georgetown did not initiate this amendment nor did the university have any prior knowledge that Senator Armstrong was initiating such an amendment.

Georgetown University continues to comply with the court order in the case of the Gay Rights Coalition of the Georgetown University Law School, et al v. Georgetown University. Georgetown lives and functions according to the principles of home rule. It is Georgetown's understanding that Senator Armstrong introduced this amendment because of his strong personal convictions concerning religious liberty and the university respects his decision to do so.

Mr. ARMSTRONG. Will the Senator yield for a question about that letter?

Mr. HARKIN. Without losing my right to the floor.

Mr. ARMSTRONG. Mr. President, I was not aware of the existence of that letter, but that is entirely consistent with my conversations with the university. In talking with officials at the university yesterday I pointed out to them I had not proposed this amendment or suggested the amendment at their request, that I had not sought their support for it, they had not given any support for it, and in fact that I did not think it should be portrayed as, in any way, an initiative of the university. It is what has happened to Georgetown University that prompted it. But I believe that in no way and at no point in my discussion did I attempt to indicate that they had considered or been asked to consider or had endorsed my amendment.

They are in a difficult position. The truth of the matter is that the university, even if my amendment is agreed to, even if the offending section of the D.C. city code were to be repealed altogether, they still have to live with the government of the District of Columbia. They still have to get zoning permits. They still have to get various kinds of operating permits. They still have bond issues.

By the way, I did not go into it, but maybe on another occasion I will, one of the fallouts of this and one of the reasons it is hard for a university to, literally in this case, fight city hall, is because city hall has some other ways to punish someone that they disagree with.

So I am thankful to the Senator for making that point. This is the Armstrong amendment. And by the way, it is Armstrong, Wallop, and Hatch amendment, and the Nickles amendment with unanimous consent, since my colleagues did ask to be added, and I do ask unanimous consent they be added. It is the Wallop-Armstrong-Hatch amendment, not the Georgetown University amendment.

The PRESIDING OFFICER. Without objection, they may be added.

Mr. HARKIN. Also, Mr. President, I have an indication from Father Timothy Healy, who is the president of Georgetown, to the members of Georgetown's faculty and alumni, dated March 28, 1988. I think it is important to point out a couple of elements of that.

Mr. President, I would ask unanimous consent that the entire text of this communication be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HARKIN. A couple of points on the letter that I would like to point out and I would quote for the Senator from Colorado and other Senators.

Father Healy said the board discussion, that is the board of overseers, the Board of Trustees of Georgetown University—"the board discussion was long and serious, and counsel was present for it."

We began by acknowledging that there is such a thing as discrimination against homosexuals and that, as a Catholic institution, in faithfulness to the Church's teaching, we had to support legal efforts, sometimes even imperfect ones, to remedy that discrimination.

Let me repeat that.

We began by acknowledging that there is such a thing as discrimination against homosexuals, and that, as a Catholic institution, in faithfulness to the Church's teaching, we had to support legal efforts, sometimes even imperfect ones, to remedy that discrimination. We also were aware that the appeals court had granted us what we claimed was our principal interest, the freedom to refuse official recognition to these groups.

And that, really, is the essence of the court case. The court basically said that they had to provide them, this group, with the same facilities—let me get the appropriate wording here so I do not make a mistake. Yes.

The Court said:

The act only requires Georgetown to grant the groups the tangible benefits associated with university recognition.

It does not say that they have to recognize them, but they have to provide them with the tangible benefits. Father Healy goes on to say:

These benefits included office space, telephone, copying facilities, access to mailing lists, listing in various handbooks, a mailbox, and the right to apply to student government for an annual budget.

"The university had long felt that the key issue was recognition," and not—and these are my own words now, and not that they should provide them with these benefits. So, I feel that, again, the amendment offered by the Senator from Colorado is really not in keeping with the thrust of what Father Healy and what Georgetown University has said that, not only are they willing to do, but they want to do.

I further read from Father Healy's communication to the board:

In the days that followed, an acceptable agreement was reached. It protected the essential elements I have described above, and it was accepted by the judge. Following the instructions of the board, the university has allowed the last day on which it could appeal for certiori from the Supreme Court to pass without an appeal.

In other words, an acceptable agreement was worked out. They have complied with the court order. In the spirit of comity everything is working just fine.

So, Georgetown University has not come to the Senate to ask us to do anything to override the court's decision or the agreement that was reached between the group—I cannot remember the exact name of it, I think the organization called "The Gay People of Georgetown Universi-

ty," the agreement reached between that organization and the university.

So what we have here is an amendment. Again, I respect Senator ARMSTRONG's strong feelings in this regard. He talked to me personally about it on the floor yesterday. Quite frankly, in some ways, I could look at this amendment and find a lot of merit in it. But sometimes merit is misguided if it is applied to a situation where people have already worked out their misunderstandings or their problems, which is the case here. I think that what, perhaps, the Senator is doing with the amendment is addressing a wrong that has already been taken care of and that does not need the interference by the Congress of the United States.

I am not even making the home rule argument. I have not even gotten to that issue yet. As the Senator said, I probably would. I have not even reached the home rule argument, which is a whole other situation itself, about us telling the District of Columbia what kind of laws they can have and cannot have. I just want to restrict my comments at this time to the communication from Georgetown University and also to the letter or the communication from Father Healy to the members of Georgetown faculty and alumni dated March 28, 1988.

Mr. ARMSTRONG. Mr. President, will the distinguished Senator yield?

Mr. HARKIN. I want to finish this. I thought the last couple of paragraphs of the letter were important and, I think, indicate the sensitivity of Father Healy and the Catholic Church, of which this Senator is a member, to this perplexing and sometimes contentious issue.

Father Healy concludes his letter to the faculty and alumni by saying:

I am sorry that I could not have written a briefer letter, but the matter has been complicated, the history long, and the stakes high. This case is one in which Georgetown has consistently (and at serious cost) upheld Catholic teaching while it sought for practical ways of implementing it pastorally in a university context. Since this is an issue that shows no signs of going away, and since it is one on which the Church has yet fully to develop her thinking, I wanted the faculty and alumni to understand the actions of the University and the reasoning behind them.

No letter from any university president comes without a request. These eight years have been long and divisive. Thanks to the help of many on the faculty they were considerably less divisive than they might have been. This is the kind of case that no one wins, and both sides lose. The University now needs everyone's help to pull its community back together, and to work so that all of Georgetown's people may find themselves, as the poet says, "United by the strife that divided us."

Those are healing words and those are words, I think, that we ought to take to heart. They had a strife, a long situation that went on for a long time and has been resolved. Many things may be not to the liking of each and every party involved, ever individual on both sides, but resolved in a manner, as Father Healy says, that both upholds Catholic doctrine and also upholds the pastoral duty of the church to minister to all without discrimination. And when it says to minister to all, it means just that.

So this, I think, has been a fair and equitable resolution of this matter. That is why I see the amendment as one that really is not applicable in this situation and I oppose the amendment for those reasons.

EXHIBIT 1

GEORGETOWN UNIVERSITY,
Washington, DC, March 28, 1988.

To the Members of Georgetown's Faculty and Alumni.

LADIES AND GENTLEMAN: For the past eight years Georgetown University has been engaged as the defendant in a law suit brought by two groups of homosexual students, one on the University's Main Campus and one at the Law School. This week the University arrived at an acceptable agreement with its opponents for the order that the trial court must issue in this matter. For that reason the University will not appeal the case to the Supreme Court. I am writing to give you the history of this long affair, and also the University's reasons for settling at this point rather than carrying it further.

In 1977, a group of students at the University formed an organization called "Gay People of Georgetown University" (GPGU). In 1979 and again in 1980, GPGU requested and received "student body endorsement," a status requiring approval only by the student government and not by the University. This endorsement entitled the group to advertise in student publications, to apply for lecture funds and granted them a limited use of University facilities. The group, however, wanted more than student body endorsement. It demanded full University recognition. That recognition would have meant that the University endorsed the activities of the organization, and would also have afforded it more extensive benefits, including University funding.

The University rejected GPGU's request for University recognition on the grounds that the group presented a homosexual lifestyle as morally acceptable. Among the group's stated purpose was "fostering theories of sexual ethics consonant with one's personal beliefs." The University stated that norms governing sexual conduct were objective, and that Catholicism does not teach a sexual ethic based merely on personal preference. Georgetown emphasized that "while it supports and cherishes the individual lives and rights of its students, it cannot subsidize this cause because it would be an inappropriate endorsement of a Catholic University."

At this point, local government became involved. The District of Columbia has an ordinance called the Human Rights Act. Under that act it would be an unlawful discrimination for an educational institution,

* * * to deny, restrict, or to abridge or condition the use of, or access to, any of its facilities and services to any person otherwise qualified, wholly or partially, for a discriminatory reason based upon the race, color, religion, national origin, sex, age, marital status, personal apparance, sexual orientation, family responsibilities, political affiliation, source of income or physical handicap of any individual. * * *

Under the same act, sexual orientation is defined as "male or female homosexuality, heterosexuality, and bisexuality, by preference or practice."

Under the provisions of this statute, GPGU, joined by the similar group at the Law School, filed suit in the Superior Court of the District of Columbia alleging that the University had violated the Human Rights Act. The District of Columbia itself promptly intervened as a plaintiff to obtain enforcement of the act.

In October, 1983, the Superior Court, in the person of Judge Sylvia Bacon, declared the act unenforceable against Georgetown under the "free exercise" clause of the constitution. The court found that under Catholic doctrine, to which Georgetown adheres, no one "affiliated with the Roman Catholic church may condone, endorse, approve or be neutral about homosexual orientation, homosexual life-style or homosexual acts." The trial court thus found that "the District of Columbia Human Rights Act must yield to the Constitutional guarantee of religious freedom."

The plaintiff then went to the Court of Appeals of the District of Columbia. A three-judge panel in July, 1985, reversed the trial court by a vote of two-to-one. That same day, however, the Court of Appeals issued a *sua sponte, per curiam* order, vacating the panel's opinion and setting the case for *en banc* consideration.

Twenty-five months after the case was heard *en banc*, the court issued its decision in November 1987. Each judge wrote separately, and there was no opinion for the court. The court was shy one judge, and another judge, a former Georgetown dean, recused himself.

Despite its scattering of opnions, however, the holding of the court is clear: the District of Columbia has a compelling interest in eradicating discrimination against homosexuals and that overrides the First Amendment protection of Georgetown's religious objections to subsidizing homosexual right's organizations. The Court of Appeals, held as a matter of statutory interpretation that the act does not require Georgetown to give the groups formal University recognition, which the court labeled an intangible. Instead, the court said, "The act only requires Georgetown to grant the groups the tangible benefits associated with University recognition." The court, therefore, recognized the distinction in principle between officially recognizing an organization and underwriting its activities.

It is important at this point to interrupt this narrative, and describe the University's position during this long litigation. At the first trial, and in the endless depositions that preceded it, the thrust of the plaintiff's argument was for "recognition." The University fought against that thrust and prevailed. When the case came before the Court of Appeals, the plaintiffs dropped the notion of recognition almost entirely, and argued that all they sought were the tangible benefits. These benefits included office space, telephone, copying facilities, access to mailing lists, listing in various handbooks, a mailbox, and the right to apply to student government for an annual budget. The Univesity had long felt that the key issue was recognition, in other words that Georgetown not be obliged to declare that it regarded a homosexual life-style as morally neutral.

The issue of tangible benefits was a more complicated one. First of all, the group enjoyed tangible benefits by its student government recognition, and indeed acquire more of the same kind of benefits by the ancient art of scrounging. Thus the group existed, met in University facilities, used University bulletin boards to advertise its meetings and activities, ran a limited program of activities, and had access to student funds for inviting speakers onto campus. They were also able to borrow telephones, Xerox machines, and other facilities from other student organizations. Since you are familiar with the way Georgetown runs, you know that these "benefits" are normally taken for granted by any group of students. Recognizing that students as citizens have a right to associate in any way they please, the University did not interfere with any of these activities. It has also long accepted as a premise that, provided nothing illegal or obscene transpires, it will not interfere with the presence of speakers on campus, no matter how unacceptable their opinions to the University itself. During these eight years we have had speakers of the ilk and character of Roberto D'Aubission from El Salvador, which demonstrates how consistently the University has held to the principle that Georgetown neither approves nor disapproves speakers that are invited by any group of students or faculty. For all these reasons, the plaintiffs in their presentations to the Court of Appeals were able to make a substantial case that they were simply asking to have, officially, not much more than what they had long enjoyed unofficially. This claim was, in part, the simple truth.

It could at this point be argued that Georgetown should have taken a harder line, and every time the gay groups surfaced, refused them any cooperation, tolerance, or access. Lawyers can make much of this kind of a suggestion, but lawyers don't run universities. Had Georgetown proceeded this way during the past eight years, we might have had a stronger case to present to the Supreme Court, but we might also not have had a university. The groups involved are small, indeed the full roster of members has never, to my knowledge, exceeded 20. But any public harshness or disrespect on the University's part would have been recognized by the rest of our undergraduate and law students as so thoroughly contradicting Georgetown's being and traditions that they would have refused to accept it.

Much more important, Georgetown has long, on Catholic moral grounds, fought all forms of discrimination. It does not discriminate in any improper way in the admission, retention and graduation of students or in the appointment, promotion or tenuring of faculty. In addition, as a Catholic university it has always recognized its pastoral as well as its educational responsibility to each and all of its students. These young people are here and thus are ours—to teach and guide, to cherish and protect, and above all, to respect.

That pastoral obligation includes as clear a presentation as we can make of human sexuality in all its complexity and beauty as well as in its divine orientation toward the permanent commitment and responsibility of marriage. Our teaching, however, must be set in a climate of respect and understanding for it to be heard and, indeed, for our community to live and flourish. Disrespect, condemnation and harshness seem to us incompatible with correction or even instruction itself.

You are also well aware that the University's responsibilities on the two campuses are different. Students at the Law School are adults, all of them having finished college, and many of them entering two or three years after their bachelor's degrees. In addition, they are a more religiously heterogeneous body. On the Main Campus, where a substantial majority of the students are Roman Catholic, they first come to us at seventeen and eighteen. At this time of life sexual identity is a serious question and, for at least some, is a source of anxiety and trouble. The University's presence in this delicate area of human growth must be principally pastoral. Abstract moral teaching is needed, but may well also appear to those at whom it is directed both as an interference and a disputable one at that. A posture of total intransigence on the University's part might have created more anger among law students, but it would have worked deep and serious trouble among undergraduates. Thus in everything it said and did in this long trial, Georgetown had to remember that its words and actions would be heard and seen by two different groups of students with sharply divergent needs. That is not meant to deny the University's clear pastoral responsibility toward both groups, and above all not to deny the well-established fact that few human beings derive much spiritual sustenance from being clobbered.

To return to the narrative, it was clear that the divided opinion of the Court of Appeals was still 5-to-2 against the University. The court had tried deliberately and with some skill to tailor its decision to what it felt to be the facts of the case. The University itself had, since the opening of the trial, more vigorously defended its right not to endorse a homosexual life-style than it had defended the right to deny quite minimal tangible benefits to these particular student groups. In that sense, the court could have been said to have adopted the University's own distinctions as presented by its counsel.

During the course of the appeal, and certainly after it, the University had tried to negotiate with the plaintiffs to see if the entire question could not be settled out of court. At the early stages of the trial, the plaintiffs' insistence upon formal University recognition made such negotiations impossible. After the decision of the Court of Appeals, this insistence disappeared, and all that the University was obliged to negotiate was a listing of tangible benefits.

On the ancient and honorable grounds that anyone who intrusts his future to a court is a fool, the University tried seriously to negotiate. In those negotiations it had four principal purposes. The first was to make certain that the tangible benefits awarded by the court did not include religious services, or access to the religious facilities and functions of the University. The second objective was to make certain that Georgetown was not unwittingly used as a staging ground for community activities from Washington or elsewhere. The third objective was to avoid any direct advocacy of homosexual acts as well as to preserve the campus from being the scene of any kind of activity that could under normal moral canons be called improper or indecent. The fourth was to prevent any ambiguous use of the University's name to imply that it approves of homosexual life-styles as morally neutral. Over long and difficult negotiations, covering several months, the University has finally achieved an agreement with the plaintiffs which was presented to the trial court as an agreed upon order for it to issue. In the order as it stands, all four of the major goals the University sought in these negotiations are achieved.

The major decisions in the University's conduct of the case were initially made by me and the Chairman of the Board under advice of counsel. In addition, at several meetings of the full Board the status of the case and of the various developing positions was described for all the members. Thus the Board was thoroughly informed through the entire process. When the decision was handed down by the Court of Appeals last November, the executive committee reviewed the entire case, and heard the advice of counsel. At a subsequent meeting of the executive committee, the members decided that the matter ought to be brought to the whole Board, and for that reason petitioned the Supreme Court for an extension of the time allowed for an appeal. At the same time the executive committee requested that counsel prepare a briefing on the issue and asked for a further analysis of the appropriateness of an appeal, of our chances of gaining certiorari from the court, as well as of the probability of the court finding in the University's favor. The Board also asked that a moral theologian prepare a paper analyzing the case from the Church's point of view. Archbishop Hickey had written me several letters, and these too were presented first to the executive committee and then at the Board meeting on March 17th to the entire Board. The whole day was given over to discussing whether or not to appeal to the Supreme Court.

The Board discussion was long and serious, and counsel was present for it. We began by acknowledging that there is such a thing as discrimination against homosexuals, and that as a Catholic institution, in faithfulness to the Church's teaching, we had to support legal efforts, sometimes even imperfect ones, to remedy that discrimination. We also were aware that the Appeals Court had granted us what we claimed was our principal interest, the freedom to refuse official recognition to these groups. The Board had available to it the brief that the University had submitted to the Court of Appeals, and in that brief this was clearly the University's principal concern. The Board also heard arguments pro and con on the state of the case and its suitability for the Supreme Court. We knew that the decision of the Court of Appeals for the District of Columbia might well be cited in other places as an authority, but that it legally bound only institutions within the District, and that it was based upon a very wide-reaching statute, to the best of our knowledge more broadly drawn than any other statute in the nation. It was pointed out to us that Catholic University, with a very different set of facts because of its pontifical status, might very well not be bound by the decision affecting Georgetown.

The conclusion of the Board was that we had a very weak case to present to the court for the following reasons:

(1) The decision granted the University what it said it wanted, and the court manifestly regarded the "tangible benefits" as minor. That perception was justified by the University's own brief.

(2) In order to make a successful appeal, we were advised that we would have to attack the statute itself, as well as plead our rights of free exercise and free speech. The Board felt that a Catholic institution would have difficulty attacking the statute, which while it was perhaps over-inclusive, at the

same time addressed a real problem and constituted a reasonable exercise of the District's police powers.

(3) All the members of the Board felt that having treated our gay students during the long course of the trial with sympathy and understanding made it possible for the other side to urge that we sought now to refuse what we had all along freely granted.

(4) Everyone felt that the reaction of the Supreme Court when we asked for a stay in execution indicated that it was not sympathetic to the University's position. As best we can determine the denial of the stay was 7-to-0.

(5) Judge Antonin Scalia recused himself from the discussion of the stay and thus from the case. He is not obliged to give a reason and he did not. The press speculated that as an alumnus of Georgetown he did not wish to be involved in the case. Even with the addition of Judge Kennedy, this left us facing an eight-judge court, and everyone felt that this was not an ideal way to approach the Supreme Court.

(6) As the decision now stands, its binding authority is limited to the District of Columbia and is based on a broadly drafted statute peculiar to the District. If the case were taken by the Supreme Court (many on the Board felt it would not be) and if the court decided against us, a national precedent would be set which could cause much mischief.

For all of these reasons, the Board voted unanimously that it would be best to work out an agreement with the plaintiffs in the case, so that the trial court in issuing its order would take into account those aspects of its work and life that the University sought most to protect. The Board instructed the University to seek such an agreement, and only to appeal to the Supreme Court if it became clear that the agreement would not be forthcoming or that there was little chance of the judge incorporating it into her order.

In the days that followed, an acceptable agreement was reached. It protected the essential elements I have described above, and it was accepted by the judge. Following the instructions of the Board, the University has allowed the last day on which it could appeal for *certiorari* from the Supreme Court to pass without an appeal.

Needless to say this long and complicated process has been expensive for the University. The legal fees, both our own counsel's and those the court will mandate for opponents' counsel, will be close to three-quarters of a million dollars. Where Georgetown has really been made to pay for its stubborn defense in this suit is in the denial of the tax-exempt bonds to which it was legally entitled. That denial had nothing whatsoever to do with the case: as a matter of fact the denial was plainly illegal up until November of 1987, since up to that date the prevailing court decision was in the University's favor. Over the course of the next thirty years that denial could cost the University somewhere between $30-50 million dollars. As far as I can see, the issuance of tax-exempt bonds from the District of Columbia is now impossible, and the University must look elsewhere or simply take the consequences.

I would also like to comment on the conduct of the Board. Georgetown has a large Board, and only four members were absent from the discussion on Thursday, March 17th. Throughout the five-hour discussion, the Board conducted itself with common sense, courtesy, and a deep care about the religious dimensions of the case. At no point, nor by even the vaguest suggestion, did any member of the Board imply that these religious aspects were unimportant or indeed other than primary. It was a marvelous demonstration of how a serious board understood Georgetown's tradition as a Catholic university and defended it to the best of its ability.

I am sorry that I could not have written a briefer letter, but the matter has been complicated, the history long, and the stakes high. This case is one in which Georgetown has consistently (and at serious cost) upheld Catholic teaching while it sought for practical ways of implementing it pastorally in a university context. Since this is an issue that shows no signs of going away, and since it is one on which the Church has yet fully to develop her thinking, I wanted the faculty and alumni to understand the actions of the University and the reasoning behind them.

No letter from any university president comes without a request. These eight years have been long and divisive. Thanks to the help of many on the faculty they were considerably less divisive than they might have been. This is the kind of case that no one wins, and both sides lose. The University now needs everyone's help to pull its community back together, and to work so that all of Georgetown's people may find themselves, as the poet says, "United by the strife that divided us."

Sincerely,

TIMOTHY S. HEALY, S.J.

Mr. ARMSTRONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. As the Senator from Iowa pointed out, I did approach him privately with a request that he consider joining me in sponsoring this amendment. I can only assume from what he said he does not wish to do so. I judge from what he said that he would be uncomfortable as a sponsor of this amendment and he probably is going to vote against it. I must say I appreciate the tone of his observations and the thoughtful, friendly spirit in which he is approaching this matter.

I think perhaps the Senator from Iowa was conferring with the majority leader and, therefore, was not able to overhear a part of the discussion which I offered earlier in which, in part, I said the same thing he has just said so well and properly about tolerance for persons whose behavior or ideas are different from our own. In fact, I quoted from and had printed in the RECORD an editorial from the Catholic Standard that makes exactly that point.

The Catholic Church teaches and, although I am not a Catholic, I also believe that it is morally wrong to persecute or discriminate against homosexuals, but not to condone homosexual behavior. My own view is the same as the church's on that point, but that does not entitle us to homosexual bashing; it does not entitle us to bash adulterers; it does not entitle us to bash, dehumanize, brutalize, discriminate against, or hold down people who are guilty of any of the sins which most of us, perhaps all of us, believe are common to mankind.

In fact, if that ever came into vogue, I do not assume for a minute that Senators, including the Senator from Colorado, would be exempt from that kind of discrimination. My observation of human nature, my belief, based upon a reading of the Bible, is that we are all guilty of gross offenses against the moral law.

I compliment the Senator for his observations on that. It is completely consistent with my own belief, and it is consistent with not only Georgetown University, but the Catholic Church.

I also think it is worthwhile for the Senate to have its attention drawn to the letter of Father Healy, a copy of which I have in my hand. I did not mention it because it is a long letter, and I did not want to take more time than I should.

The Senator has quoted from it, and I encourage every Senator to read the full text of the letter as their time permits, but I do not quite agree with the characterization of it by the Senator from Iowa. He makes it sound like a report, in effect, that they worked this thing out and everything is fine. That is really not the flavor of the letter.

Let me read a couple paragraphs he did not read. I noted with interest the paragraphs he did read, but I would like to point out that on page 7 and 8, Father Healy, in his report to the faculty and other interested persons, mentioned several reasons why the university decided not to further appeal the case.

It was not because they thought they were wrong. It was not because, in essence, they thought the agreement was a good one, or a fair one or it represented justice or academic freedom or religious liberty. It was for prudential reasons. It was for practical considerations.

What were those considerations? Let me quote one paragraph:

> Needless to say this long and complicated process has been expensive for the University. The legal fees, both our own counsel's and those the court will mandate for opponents' counsel, will be close to three-quarters of a million dollars.

I understand that the court required the university to pay the legal fees for the group which had taken them to court. But he goes on:

> Where Georgetown has really been made to pay for its stubborn defense in this suit is in the denial of the tax-exempt bonds to which it was legally entitled.

This is the matter to which I referred to earlier. This is the case, and it is evidently what the Georgetown board looked at: We can litigate this case; we fought it for 8 years; we can fight it for 10 more years; we can spend another million dollars, $5 million, or $20 million on the costs of

such a case, but the real cost is fighting city hall.

Father Healy makes the point as a result of the denial of tax-exempt bonds to which, in his opinion, they were legally entitled, the cost would be between $30 and $50 million to the university.

So I would not want Senators to think that the reason why they only fought for 8 years is because they finally were convinced the university was wrong. It was just at some point they had to make a practical determination of the cost.

I do not think that is improper. That is a decision that the church has to make a lot of times. It has to make that decision every day in places like Poland and Nicaragua. The church has to decide how much will it resist the civil authority and how much will it accommodate it.

Sometimes the church chooses wisely and sometimes it does not. In fact, the thought that comes to my mind was the decision of accommodation which the Lutheran Church made in Germany at a certain critical moment. They decided it would be better in the long run—and I do not say this in criticizing; I say this as a person who was a Lutheran for a couple of decades; I do not say it to criticize—but many Lutheran churchmen in Germany decided that the wiser course was to try to work with Hitler instead of working against him.

The Catholic Church at different times has made different decisions. I mentioned Poland. When he was a Cardinal, the present Pope had to do a balancing act every day as to how hard to push the civil authorities, where to draw the line. In Romania, churches do that every day.

So in this particular case involving this particular infringement on religious liberty, this university, after spending three-quarters of a million dollars in legal fees, facing the prospect of a $30 to $50 million cost as a result of tax-exempt status, and after 8 years of bitter divisiveness, felt we pushed this as hard as we can. Somebody else has to pick up the ball.

But you know, my friends in the Senate, we do not have that problem. We can correct this injustice today just by taking a vote. It is not going to cost us any legal fees. It is not going to cost us $30 to $50 million. It is just a plain policy issue to us because we are not going to have to take this to the Supreme Court. Either we think that this university and others that are similarly situated in the District of Columbia ought to be forced to provide facilities and recognition and approval and utilities and what not to groups whose organizing principles are anathema to them or we do not. And if we think that, well, then, you vote no. If you think these universities ought to be so required, then you vote against this amendment. If you think they should be permitted to withhold those facilities, those rooms, those bulletin boards, mailing privileges, mail boxes, computer lists and what all, then you vote yes. It is not a home rule issue. We have already so shown right in this bill. Ninety minutes ago we adopted an amendment to the generic law of the District of Columbia, and so anybody who says this is home rule, that is just hiding behind a fiction. That is pretty clear.

Mr. President, I also would not want any Senators to be persuaded by comments of my friend from Iowa that this is an academic or theoretical issue since, after all, a consent decree had been entered. Of course, that is perfectly true. But I want to note that the people I talked to at Georgetown University went out of their way to make it plain that whatever is the result of this amendment, they intend to faithfully abide by the terms of the consent decree. They entered into that in good faith. They are not going to break their word. It is not a matter of this amendment.

But let me point out that does not mean the issue is settled because another group could come forward tomorrow at another university or at Georgetown and the question would arise immediately again, and I assume that absent the passage of some amendment Georgetown probably would cave in again. They would not have much choice. Catholic University, the same thing. In fact, I understand that has already happened, though I cannot document it. It may not be one group. It may be 5 groups, 10 groups, 20 groups. And it may at some point, although we do not address it, not be sexual groups; it may be atheist groups; it might be voodoo groups; it might be any kind of groups. So this is not a moot issue.

Well, I mentioned what happened in Germany because it is a classic case but it happens in almost every era and every generation, that the church has to decide where it draws the line and so do legislative bodies. They have to decide whether or not they are really committed to defend academic freedom and religious liberty.

In thinking about Germany, what flashed through my mind was a statement—I cannot quote it exactly; I do not have it before me, but I shall never forget the essence of it—attributed to Pastor Martin Nemoeller, who, after the war, recalled what happened when Hitler started coming for people. He said:

> First they came for the Jews and I didn't do anything because I wasn't a Jew. And then they came for the Communists and I didn't do anything because I'm not a Communist. And then they came for the trade unionists and I didn't stand up because I'm not a trade unionist.

Mr. President, I am not a Jew, I am not a trade unionist, I am not Lutheran, and I do not happen to be a Catholic, although this occurred at a Catholic university. But I will just tell you this is an issue that every Senator ought to stand up and be counted for.

Mr. NICKLES. Mr. President, I understand the Senator from Colorado is finished. I have had several colleagues indicate to me that they want to vote. I hope that we can vote. I think we are ready to handle this amendment, dispose of it in whatever way the proponents or opponents would like—it makes to this Senator no difference—then have a vote on final passage and we would at least be done with this bill.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I ask unanimous consent that I be allowed to speak not to exceed 7 minutes as though in morning business.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Vermont is recognized.

THE NATION'S DROUGHT

Mr. LEAHY. Mr. President, Senators on both sides of the aisle are well aware of the very difficult time we are having with the drought throughout the country; in fact, the whole country is well aware of it. It is one of those cases where the media has provided a service to the rest of the Nation by highlighting the plight of the drought areas of this Nation. The problems of the drought areas are very serious—they go beyond anything that literally has occurred in my lifetime. I have been to a number of these drought areas as have many, many other Senators here. We are seeing things that we cannot compare to anything else. Because of that, Mr. President, I have been working with the distinguished ranking member of the Senate Agriculture Committee, Mr. LUGAR, and with Senators on both sides of the aisle in trying to put together drought legislation. We have also been meeting with the Governors of this country from those areas, and with the Secretary of Agriculture.

Mr. President, I want to tell my fellow Senators what has been going on. Last week I announced that we

would consider drought legislation in the Senate Agriculture Committee next week. During the past several days the staffs of the various Senators and the Senators themselves have been working night and day in trying to construct drought legislation. It's a puzzle—like a Rubik's cube. As you take care of one problem, you either exacerbate or ignore a problem in another area. But let me assure you, slowly we will bring all the concerns together. We have been working long hours, and I want to let the Senate know what we plan to do. We will continue to work throughout today, this evening, the weekend, and it is my intention to be able to announce specific legislation along with other Senators, on both sides of the aisle on Monday.

The Senate Agriculture Committee will meet on Tuesday morning to begin action on drought legislation. It is my intention to keep that committee in session as long as it takes. If we can make progress, and I suspect that there will be a bipartisan willingness to make progress, and if it looks like we could finish by staying in all night, we will do just that. This is an important issue. We are now in possession of new facts that enable us to begin work on specific legislative proposals.

Mr. President, we have to do this. We have to have disaster payments based on a percentage of the target price. We have to take care of losses within a certain threshold. The Senate will move very quickly on this in our committee. We have to send a signal of hope to our farmers and ranchers, not the specter of disaster. Today the farmers and ranchers of this country fear that everything that they have worked for all their life will be lost this year. What we can do with legislation is tell them, to have hope that they will be in business again next spring.

I think we can do it. We can remove the shadow of bankruptcy and instead replace it with the bright light of a new crop, a new season, a new herd. That is what we are working in areas such as treating nonprogram crops like program crops, and livestock feed assistance to protect foundation herds. In the area of dairy, we hope to write, into law, the prevention of the next 50 percent price cut because dairy farmers throughout the country are facing increased cost due to the increased cost of food and feedgrain. We must help dairy farmers cope with that.

I want to say what we have done just so all Senators will understand. Last week before we went out of session and again this week, Senator LUGAR, who is the distinguished ranking member of this committee; and I; Chairman DE LA GARZA, chairman of the House Agriculture Committee; and Representative MADIGAN, along with the Secretary of Agriculture and distinguished members of the committee, many of whom are here, met to try to flesh out the general outlines of what we need in legislation.

We agreed that we will make an effort this weekend to put that into a final package with the intention hopefully to have legislation introduced in both the House and the Senate which is as identical as possible.

It is then my intention—I have discussed this again today with the distinguished Senator from Indiana—to call the Senate Agriculture Committee together on Tuesday. I encourage members of the Senate Agriculture Committee and other members with ideas to deal with the drought, to attend the hearing which will be the first general hearing on the broad outlines of what we have proposed in both bodies, and then sit down and start to write the legislation. In that regard I intend to keep that committee in session as long as we can be productive with the idea that we can and must bring out a bipartisan piece of legislation onto the floor of the U.S. Senate.

The important thing for people to remember is that we will not foreclose hope. We must give a reason for tens of thousands of farmers and ranchers to stay in business. We will give them the promise, a promise fulfilled by the Congress of the United States, that they will be in business next year.

Mr. President, I yield the floor.

Mr. EXON. Mr. President, will the Senator yield?

Mr. LEAHY. I yield the floor.

Mr. EXON. Mr. President, I ask that I be allowed 1 minute to make a brief response to the distinguished Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EXON. Mr. President, I want to congratulate the chairman of the Agriculture Committee for the remarks he just made and associate myself with those remarks. The chairman of the Agriculture Committee has done an outstanding job, and I am pleased to see that he actually recognizes the seriousness of this drought problem. I am pleased to see that the Secretary of Agriculture has at long last in the last day or so said we need legislation now. He and many of those associated with him have been saying we do not need legislation, and we cannot assess the damage until the end of the crop season.

Now is the time to move, and I hope that a bipartisan package can be put together under the direction of the chairman of the Agriculture Committee. It is vitally necessary to give hope and some understanding and some specific guidelines to farmers across this Nation who are being devastated by this drought.

I thank the chairman for his alert.

Mr. LEAHY. I thank the Senator.

Mr. DOLE. Mr. President, I agree with the Senator from Vermont and the Senator from Indiana and all other Senators who come from farm States. I think we have a responsibility to be nonpartisan, and I hope that can be encouraged on both sides. If it is, we will get a bill passed very quickly that will relate to the drought and not several other things that might come up.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, I ask unanimous consent that I may speak out of order for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

BIPARTISAN DRUG BILL

Mr. DOLE. Mr. President, I take the floor at this moment, first of all, to thank the distinguished majority leader for a letter I received yesterday indicating his hope that we could sit down together and work out a bipartisan drug bill.

I noted this morning a column in the New York Times by Mr. Rosenthal, in which he suggests that this is a great opportunity for all of us—but particularly the majority leader, to sort of cap his services as majority leader—to arrive at an outstanding drug initiative.

We are prepared to work with the majority leader and Members on that side. There has not been a Republican bill introduced. We discussed an outline of a proposal yesterday. We will be sitting down and meeting with the majority leader's representatives.

I have asked Senators WILSON, D'AMATO, and GRAMM—and there may be an additional Senator on this side—to represent the Republicans in those negotiations. I think we do have an opportunity.

I wanted to indicate that today and to include in the RECORD an outline of the Republican proposal. It is not a bill. It is only a proposal on which we hope to work together with the Democrats, to have a truly bipartisan package.

Mr. President, yesterday, a number of my distinguished republican colleagues and I unveiled a major new drug initiative.

In 1986, Congress enacted an omnibus drug package that focused on the supply-side of the drug problem. As a result of the bipartisan, bicameral effort, we have made major strides in thwarting the entry and trafficking of illegal drugs in America.

But that was only one side of the equation. This new Republican effort zeroes in on the second half—the demand side—of the drug problem.

Our proposal covers many issues, but there are three areas we believe should be given priority—both in funding levels and policy initiatives:

demand reduction, post arrest programs, and domestic eradication.

All three are critical, but none more critical than reducing demand. The time has come for Americans to know, without question, that if you play with illegal drugs, you are going to have to say. So, this plan includes proposals that we hope will help to create a new attitude that recognizes that drug users must be responsible for their actions, while at the same time providing increased funding for treatment, education and prevention to those truly interested in becoming drug free.

Mr. President, it is my hope, and my belief, that the end result of this effort will parallel what happened in 1986 when we worked together with our Democratic colleagues here in the Senate and with the House to come up with an effective antidrug package. The distinguished majority leader, Senator BYRD, and I have exchanged correspondence, which I will ask to be included in the RECORD, clearly stating our commitment to such a bipartisan course. I will also have printed in the RECORD an op-ed piece by A.M. Rosenthal, which appeared in today's New York Times, noting that there "was never a better time for antidrug action"; as well as a summary of the Republican proposal.

Working together, I have no doubt that the Senate, and the Congress, can approve significant antidrug legislation before we adjourn this year—an effort that will take one more major step toward eradicating the peril and pain of illegal drugs.

I ask unanimous consent to have material in connection with this matter printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

A CHANCE TO LEAD

(By A.M. Rosenthal)

Republican and Democratic senators working on anti-drug legislation say privately that they would like the public and press to send a one-word message to the two leaders of the Senate: lead.

They are not complaining about Senator Robert Byrd of West Virginia, the leader of the Democratic majority, or Senator Robert Dole of Kansas, the Republican leader. But they think one of the more important tests in the careers of the two men lies ahead, and they want to apply as much pressure as Senate politesse allows.

For Senator Byrd, who has decided to retire as majority leader, the next few weeks present an opportunity for an achievement that will say more about him than the portrait that one day will hang in Senate halls. For Mr. Dole, the test will mean a chance to rebound strongly from his primary defeats. It could help him become a Vice-Presidential choice. Even if not, his performance will shape how the country and his colleagues judge the talented, intriguing gentleman from Kansas.

Both men now face the job of persuading or bullying members of the Senate to get together and pass a bipartisan bill that for the first time will give the country an organized, coherent, comprehensible, long-range and fully funded plan of action against drugs and the drug trade.

There's never been a better moment. Every politician knows the public sees drugs as a great danger today, one that will be bigger tomorrow.

Elections are at hand. Strong political instincts tell members of Congress to take action between the Democratic Convention in July and the Republican Convention in August, before it becomes an uncomfortable election issue.

Yes, politics, but more than politics. It is one of the few issues that not only cuts across party lines, but across political cynicism.

There's no shortage of plans. Senator Dennis DeConcini, the Arizona Democrat, and Senator Alfonse D'Amato, Republican of New York, worked for months on a detailed piece of legislation. Senators Daniel Patrick Moynihan of New York and Sam Nunn of Georgia led a Democratic working group that came up with a plan full of fresh ideas. A Republican group has issued its own plan.

Now it is up to the leaders to lead, to take the suggestions and produce one bill neither weak nor so overwhelmed with emotional tangential demands—like expanded death penalties—that it is talked or nit-picked to death or impotence.

The House of Representatives, where men like Representative Charles Rangel, the New York Democrat, have steeped themselves in antidrug legislation, will also need leadership from the top. But the Senate will act first, which is why Senators are nudging their own nudgers.

President Reagan says we are winning the drug war. That draws blank looks or snickers from Congressmen, depending on whether you are talking to a Republican or Democrat.

From the hundreds of pages of proposals for a new start, here is a miniguide to some that knowledgeable Congressmen think particularly important:

1. A coherent plan of organization, with a Cabinet-level drug czar on top, and Federally aided anti-drug boards in the states and towns.

2. More money—$2.5 billion to $3 billion above the current $4 billion. About 50 percent of the money to be spent to reduce demand for drugs at home by treatment, education and law enforcement. Now, about 75 percent goes to the effort to reduce the supply by combating the drug trade at the borders and at home and trying to reduce narcotics crops abroad.

3. Long-term financing to make sure research, treatment and law enforcement do not face the yearly threat of cutbacks.

4. Special Federal attention to drug disaster areas in big-city ghettos. The goal would be to end waiting periods and provide immediate treatment for every addict who wants it.

5. More judges, police and prisons. More penalties such as withdrawal of driver's licenses and Federal loans for first-time conviction for possession of drugs, instead of dismissal or token sentences.

6. More money to the Coast Guard to fight smuggling, still the best use of the military against drugs.

7. Heavy prison terms for bankers involved in the laundering of drug funds. A strong anti-corruption effort, to convince people in the ghetto that the police really are destroying all seized narcotics, not just some. And—Jesse Jackson's suggestion—a total effort to stop the sale of high-powered weapons with which the drug killers terrorize our cities.

All this will not win the drug war, but it will get it started.

U.S. SENATE,
OFFICE OF THE REPUBLICAN LEADER,
Washington, DC, June 20, 1988.

Hon. ROBERT BYRD,
U.S. Senate,
Washington, DC.

DEAR ROBERT: Some weeks ago I asked that interested Senators compile a drug bill; I would expect that effort to be completed later this week. It is my understanding that a similar effort has been undertaken on your side.

Given our success at reaching a bipartisan agreement in 1986, I would like to suggest that we again combine our efforts. Perhaps the first step might be to have those Senators involved meet to be followed up by staff discussions.

I look forward to hearing from you on this important matter.

Sincerely,

BOB DOLE.

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
Washington, DC, July 7, 1988.

Hon. ROBERT DOLE,
Republican Leader,
U.S. Senate,
Washington, DC.

DEAR BOB: Now that our colleagues on each side of the aisle have completed a first cut at proposals to strengthen our anti-drug efforts, I hope that members from both sides could sit down in the near future to discuss drafting bipartisan legislation that could receive expeditious action in the Senate. I have asked Senators Nunn and Moynihan to head our effort and I suggest that they be in touch with their counterparts on your side to organize the discussions.

Thank you, Bob, for your help in obtaining the several agreements this week. I look to your continued cooperation in facilitating action on a bipartisan drug bill.

Sincerely,

ROBERT C. BYRD.

1988 Omnibus Anti-drug Bill—July 6, 1988

I. DEMAND

A. Personal accountability

To reduce the demand for illegal drugs:

General

1. Makes a strong statement of opposition to legalization and decriminalization of drugs.

2. Provides for a nationwide awareness campaign concerning the new penalties for drug possession and use. This is to give drug users notice that things have changed, that their illegal activity will no longer be tolerated, and that it will be subject to serious penalties.

Education/Youth

1. Conditions state participation in federal drug programs upon the state's having put into effect, within two years, procedures for suspending eligibility for a driver's license for conviction of a drug offense.

2. Withholds highway funds from states that: (a) do not administer drug tests to all drivers arrested for driving under the influence of alcohol; (b) that do not prosecute those testing positive on drug tests and do not revoke or suspend for a year driver's li-

censes for anyone convicted of drug possession; and (c) that do not require the successful completion of a drug rehabilitation program as a condition of reapplication for a driver's license.

3. Restricts Drug-Free Schools money to school systems which have in effect policies to: (a) notify a parent or guardian and police when possession of a controlled substance by an unemancipated minor is discovered; and (b) and discipline drug offenders.

4. Suspends eligibility for federal post-secondary assistance (under Title IV of the Higher Education Act) to any student convicted of a drug-related offense.

This would be prospective. All applicants start off with a clean slate. Upon application for a student loan or other assistance, the applicant receives notice that a full conviction on a drug-related offense (state or federal) will result in loss of eligibility for a certain period of time.

The same notice will suggest that any applicant who has a problem with drugs should get treatment and will provide a listing of available programs.

Upon first conviction for a drug-related misdemeanor, the person loses eligibility for all federal student assistance unless he or she successfully completes a drug treatment program.

If an individual completes a program and is subject to a second conviction of a drug-related misdemeanor, or upon first conviction for a felony, the person loses eligibility for two years.

5. Authorizes the Secretary of Education to withhold funds from colleges not in compliance with Higher Education Act requirements for a drug-free campus and authorizes the Secretary to promulgate regulations specifying the standards by which the Department—and the public—can judge whether a particular college or university is drug-free.

6. Authorizes drug testing in schools as an optional component of drug-free campus programs.

Public Housing

The Department of Housing and Urban Development is currently preparing final regulations, first proposed July 23, 1986, to codify Public Housing Authority (PHAs) procedures for leases, evictions, grievances hearings, and so forth. Even without these regulatory changes, PHAs already have the authority to terminate the tenancy of anyone engaged in criminal conduct. With the new regulations PHAs will have broad discretion to deal with any criminal activity committed by tenants within or outside their projects.

The following proposals are intended to supplement what should be a though crackdown by PHAs against illegal drugs in public housing.

1. Requires an explicit no-drug clause in all new leases in federally assisted PHAs.

2. Requires an expedited report to Congress from HUD on the actual implementation of the forthcoming regulations to ensure that they are being effectively used to ensure a drug-feee environment and protect persons in public housing.

3. Requires all PHAs to have a residents' tenant review committee to help screen out drug users and traffickers. (Some PHAs are doing this already.) HUD many waive this requirement for PHAs which make good faith efforts to form such committees but (because of possible retaliation) fail to make them work.

4. Requires all PHAs to terminate the tenancy of a public housing tenant who is convicted in a State or federal court of an offense related to the possession, use, manufacture, sale, or distribution of a controlled substance.

5. Allows block grant funds under the Bureau of Justice Assistance to be used to fight drugs in public housing.

Workplace

1. Conditions receipt of any federal contract or assistance upon maintenance of a drug-free workplace.

2. Authorities HHS, DoL, and Justice to develop non-binding guidelines for employers and employees who desire drug-free workplaces.

3. Eliminates federal legal hurdles which prevent private employers from conducting drug tests and disciplining workers who fail drug tests.

4. Expands OSHA authority to ensure drug-free workplaces, including the designation of drug use in the workplace as an occupational safety or health hazard, and data collection on the use of drugs in the workplace. (As a component of OSHA accident investigations, the agency could conduct mandatory drug tests to determine whether drug abuse contributed to the accident.)

5. Amends the Rehabilitation Act of 1973 to testify that, for purposes of employment protections, the illegal use of a controlled substance shall be considered to be prima facie evidence of the endangerment of self or coworkers.

Under current law, drug addiction is considered a handicap, covered by the anti-discrimination provisions of the Rehabilitation Act. In employment, however, those protections do not apply if the person's addiction endangers self or others. Rather than remove drug addiction altogether from the coverage of the Rehabilitation Act, illegal use of drugs—use, rather than the fact of addiction—would be prima facie evidence of endangerment of self or coworkers. This shifts the burden of proof toward the person who is using illegal drugs, to show that his usage is not endangering anyone in the workplace.

Transportation

1. Includes the Danforth provision to require substance abuse testing, including mandatory random testing, of operators and other safety sensitive personnel of aircraft, railroads, and commercial motor vehicles. These provisions would give DoT broad testing authority over federally regulated transport workers were passed 83-7 by the Senate in October, 1987 as part of H.R. 3051, the Air Passenger Protection Act. That legislation is currently being stalled by the House.

2. Withholds highway funds from states which do not randomly test a percentage of first-time drivers within the first year of being licensed and to revoke driving privileges for individuals found to be using drugs or driving under the influence of drugs or alcohol. The Secretary of Transportation would issue regulations to aid states in implementation. Testing facilities would have to meet federal standards.

3. Makes federal certification of a common carrier dependent upon the carrier's commitment to a drug-free workplace.

This would require a good-faith effort on the part of the carrier. In other words, it would not lead to the loss of certification by an airline simply because a passenger smuggles drugs. DoT would make the determination of non-compliance in problem cases, using the guidelines developed under No. 2 in the Workplace section.

4. Authorize the urban mass transit administration (UMTA) to withhold funds from any mass transit system which has not established a comprehensive detection, treatment and enforcement program within 18 months after date of enactment.

5. Airport Drug Interdiction Zone—Increases the authority and power of the U.S. Customs Service and the Federal Aviation Administration to seize and search commercial aircraft for illegal drugs and narcotics. The administrator of the FAA is empowered to designate Airport Drug Interdiction Zones in conjunction with the issuance of airport operating certificates. This enables the Customs Service and the FAA to search and seize commercial aircraft in these zones without probable cause; the seizure to last no more than two business days. Commercial airlines would be encouraged to enter written agreements of participation with the FAA.

6. Airline Anti-Smuggling Amendment—Ensures greater vigilance in interdicting illegal drug smuggling on commercial aircraft by providing for formal and uniform procedures for the inspection of commercial aircraft by the common carrier for illegal narcotics smuggling into the United States. This provision creates a standard by which airlines can measure whether its precautions have satisfied the standard of care prescribed by statute. A rebuttable presumption would be established in favor of an airline certified to be in compliance with the anti-smuggling procedures that it has exercised the highest degree of care and diligence in discovering whether illegal narcotics are on board an aircraft. Furthermore, a carrier found to be in compliance with these procedures would be subject to a lower primarily schedule.

The Rights and Responsibilities of Citizenship

1. Denies all Federal Licenses for up to 10 years in the case of felony convictions and up to 5 years for misdemeanor convictions of drug or drug-related offenses (state or federal). This would apply when the license is given to an individual or to a solely-owned corporation. It would not apply in cases where the license is held by a company, one or more of whose officers or owners was convicted.

2. Establishes as a general principle the loss of eligibility for any federal benefit or entitlement for specified periods of time depending upon the seriousness of the drug offense. Excludes safety net programs and earned benefits—e.g., veterans benefits, pensions, social security survivor's benefits—would also be excluded.

Like the proposal concerning student loans, this provision is prospective. It would make ineligible for certain benefits someone who is, in the future, convicted of certain drug-related offenses. However, in order not to penalize innocent third parties (lending institutions), it would not terminate a federally guaranteed loan if its beneficiary is convicted after the loan has been made.

3. Requires that notation be made on a passport if a person has been convicted of a drug offense or has incurred a forfeiture. In addition, revoke passports of convicted persons: 10 years in cases of felony convictions, 5 years in misdemeanor convictions.

Miscellaneous

1. Requires implementation of the Domenici provision in the 1986 bill establishing a commission to explore ways in which the media glamorize or legitimate drug abuse and to recommend remedies.

2. Requires mandatory drug testing for Members of Congress and Congressional employees.

B. Treatment, education and prevention

In general the bill expresses the Sense of the Senate regarding its concern with respect to alcoholism and other drug dependencies. Emphasis is placed on the consequences of alcoholism and other drug dependencies and recognition is given that they are treatable diseases and that there must be opportunities for successful treatment and recovery. Such treatment programs form the essential element to solving the nation's drug problem.

Department of Health and Human Services

1. Reauthorizes and continues the Alcohol, Drug Abuse and Mental Health Services block grant. The funding of the ADAMHA block is increased to $550 million of which at least 35 percent must be used for drug abuse treatment programs.

2. Authorizes an additional $20 million for states to acquire, renovate, or construct substance abuse facilities.

3. Supplemental Drug Abuse Treatment Funding—Reauthorizes $166 million and authorizes $234 million (attached to the ADMS block grant). $100 million will be set-aside for treatment programs for individuals within the criminal justice system. In addition, an 80 percent/20 percent federal/state match will be required for these supplemental funds.

4. Restricts federal funding of state treatment programs to programs which are shown to be effective by the states under guidelines set by the Secretary of HHS and based on a study by the Institute of Medicine.

5. Provides for the continuation of the Office of Substance Abuse Prevention with funding of $45 million. $29.5 million will be available for targeted education, prevention and treatment efforts for youth at high-risk for substance abuse.

6. Provides for the reauthorization of research efforts through the National Institute on Drug Abuse and the National Institute on Alcohol Abuse and Alcoholism. $183 million is provided for the National Institute on Drug Abuse.

7. Reaffirms Senate support of S. 1220 which provides $75 million for substance abuse treatment for IV-drug abusers who are at high-risk of contracting AIDS.

8. Permits the Secretary of Health and Human Services to approve national accrediting bodies for the certification of approved laboratories for drug testing federal employees. In addition, the Secretary is prohibited from reimbursing the certification of laboratories.

9. Requires the Secretary of Health and Human Services to report to Congress on the range of treatment programs for drug abuse mandated under this Act. A method of measuring the effectiveness of these programs shall be developed by the Secretary and the results of such evaluations reported.

Department of Education

1. Reaffirms Senate support of P.L. 100-297 which reauthorizes $250 million for school and community based education programs. This effort targets 70 percent of funds to school-based education programs and 30 percent of funds to community-based education efforts.

2. Requires the development of model criteria and forms for the collection of data and information to evaluate programs funded under this act. This will allow schools and community-based organizations to share uniform data and information with respect to the Drug-free Schools and Communities Act.

Department of Labor

1. Authorizes $5 million for incentive grants to employers to develop employee assistance programs for drug-abuse treatment.

2. Authorizes $15 million for OSHA enforcement and investigation to ensure a safe and healthy workplace.

Action Agency

Provides $5 million for two years to expand volunteer efforts to support community anti-drug abuse efforts. The bill also lifts the cap on three-year funding of community-based volunteer efforts.

Native American Program

1. Extends and revises the authorization of appropriations provisions of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986.

2. Increases funding for the staffing of the 11 youth regional treatment centers called for by the 1986 Anti-Drug Abuse Act. Funding for rehabilitation and follow-up services for Indian youth who are alcohol or substance abusers is also increased.

3. Emphasizes the family component in the treatment of youth alcohol and substance abuse. Studies have shown that the inclusion of family members significantly increases the effectiveness of such treatment.

II. POST-ARREST PROGRAMS

This aspect of the bill focuses significant new resources on those portions of our criminal justice system which administer post-arrest programs. Previous attempts to curb drug abuse and trafficking have often failed to fully recognize the critical necessity of balancing resources to meet the demands of increased law enforcement placed upon those Federal entities at the back end of the criminal justice pipeline, such as United States Attorneys, United States Marshals, the Federal Prison System and the Federal Courts. Increased enforcement becomes meaningless if we fail to provide sufficient funds for the prosecution, conviction, and incarceration of drug violators.

The package includes: $44 million to finance 874 positions for United States Attorneys to assist in narrowing the existing gap between arrests and prosecutions; $57.5 million for programs of the United States Marshals Service in the areas of judicial security and custody and transportation of unsentenced prisoners; $200 million to the Federal Prison System for the construction of four additional medium security prisons to relieve problems currently being experienced with a system wide 60 percent rate of overcrowding in Federal penal institutions; and an additional $166 million for the Federal Judiciary to meet the anticipated case load resulting from increased arrests and prosecutions.

United States Marshals Service Act of 1988

1. Codifies orders and regulations of the Attorney General establishing the Marshals Service as a separate unit of the Department of Justice and providing for its organizational structure.

2. Enhances security and appropriate decorum in the Federal courts by: (a) restating the marshal's traditional and premier responsibility of providing security for the courts and executing court process; (b) authorizing the Marshals to provide personal protection to judges, U.S. Attorneys and other Federal officials; and (c) eliminating the statutory provision which limits payment of court bailiffs to an unrealistically low level.

3. Provides explicit authority for the current functions of the Marshals Service, including authority to: (a) carry firearms and make arrests; (b) conduct fugitive investigations; (c) protect Federal witnesses and their families; and (d) provide for the transportation, maintenance and housing of Federal prisoners awaiting trial and sentencing, including entering agreements with states and localities to obtain necessary jail space.

4. Creates a separate U.S. Marshal's office for the Superior Court of the District of Columbia to ensure that both the local D.C. court system and the Federal district and circuit courts in D.C. receive the levels of attention they require.

5. Permits the marshals to recover the actual costs of serving non-federal court orders or processes in private litigation (currently borne by the taxpayers).

6. Furnishes the Marshals Service with explicit contracting authority to provide for security guards and service of process in non-criminal proceedings.

7. Protects the security and confidentiality of ongoing criminal investigations by exempting from standard Federal acquisition procedures the procurement of contract services necessary to assist Federal law enforcement in seizing and managing property related to criminal enterprises.

III. CRIMINAL JUSTICE

1. Death Penalty—establishes constitutional procedures for the implementation of the death penalty for the crimes for which it is currently authorized (murder, treason, espionage) as well as for new crimes such as attempted assassination of the President, drug related murder.

2. Habeas Corpus—prevents abuses in filing of habeas petitions. Provides for the following reforms: (a) establishes a time period for the filing of habeas petitions—one year for state level, two years for federal level; (b) allows the federal court to dismiss habeas petitions that have been "fully and fairly" adjudicated in the state court; (c) provides that claims not raised in state court can not be raised in federal court; (d) allows the federal court to dismiss a habeas petition on the merits even if state remedies have not been exhausted.

3. Exclusionary Rule—Codifies the Supreme Court Decision in *United States v. Leon* (1984) which provides that a search conducted pursuant to a warrant is valid if the law enforcement officer exhibits an "objectively reasonable belief" that the search is in conformity with the Fourth Amendment. Extends this exception to warrantless searches. Also provides that the exclusionary rule may not be used as a sanction for nonconstitutional violations of a federal statute or rule, unless the statute specifically provides for such a remedy.

4. Provides for drug tests as a condition for parole or probation with revocation of parole or probation upon a finding of drug use. Requires testing of all individuals on probation, parole (approximately 74,800) or supervised release on a random basis with everyone being tested at least once every 30 days. Tests to be financed by user fees.

5. Provides mandatory adult status for juveniles with prior serious state or federal drug convictions.

6. Money Laundering Amendments—Includes changes to current reporting requirement for cash purchases of consumer goods of $10,000 or more by establishing stiff pen-

alties of retailers who fail to report; other improvements to money laundering enforcement are also included.

7. Criminal penalty for polluting U.S. lands in the course of drug activities—Provides for a maximum of five years imprisonment or a fine or both for persons who, in the course of violating the controlled substances laws, place a pollutant on U.S. lands.

8. Provides enhanced penalties for certain drug violations: selling within certain distances of a school yard; the use of juveniles in drug trafficking; selling drugs to minors: 10 years without parole for the first offense, life without parole for the second offense; the operation of a common carrier under the influence of drugs or alcohol and causing serious bodily injury. Contains a provision to amend the controlled substances laws to make it illegal to distribute, possess with intent to distribute or import or export certain amounts of marihuana plants.

9. Civil sanctions—Establishes additional civil penalties for persons convicted of simple possession of heroin or cocaine. First offense—up to $250,000; subsequent offenses—$1 million.

10. Minor and technical amendments to the 1986 Drug Bill.

11. Precursor Drugs—Includes DEA Proposal to track substances required for the manufacture of illicit drugs.

12. House probation—provides house probation as a discretionary condition of probation, parole or supervised released.

13. National Institute of Justice Research Program—Authorizes $10 million to identify innovative solutions to problems in the criminal justice system.

14. Three-time loser provision for drug violators: imposition of a life sentence without parole for persons convicted of certain drug trafficking offenses if they have been previously convicted twice of drug felonies. (Current law imposes a mandatory term of 15 years without parole for any felon upon a third conviction, regardless of the type of crime involved. This proposal would specify that three drug related convictions would result in life imprisonment.)

15. Provides enhanced penalties, depending on the drug and quantity, for persons who distribute or manufacture drugs within 200 yards of a public housing project. This provision is based on the schoolyard provision in current law.

16. Drug Offenses within Prisons—Provides that persons who manufacture or distribute drugs within federal prisons shall, in addition to any other sentence, be imprisoned for 10 years. Also, provides that inmates who use drugs shall, in addition to any other sentence, be imprisoned for one year.

17. Public Safety Officers—Increases the death benefit for Federal public officers from $50,000 to $100,000.

18. Increases current mandatory sentences for using firearms in the commission of a crime of violence or drug crime.

19. Prisoner Costs Reimbursement Plan—Direct the Attorney General to prepare a plan which would require federal inmates to pay for the costs of their incarceration or to work during their incarceration or after their release to pay for such costs.

IV. PROPOSAL FOR A DRUG CONTROL DIRECTOR

1. Establishes a Cabinet level Director of Drug Control within the Executive Office of the President, to be appointed by the President with the advice and consent of the Senate.

2. Authorizes the Director to appoint Deputy Directors in the areas of drug law enforcement and drug demand reduction.

3. Designates the Director as the Chairman of the National Drug Policy Board.

4. Transfers those responsibilities now assigned to the Board to the Director, specifying that he carry that out after consultation with the Board.

5. Authorizes the Director to review and modify budgets of drug related programs before they are transmitted by civilian agencies or departments to OMB.

6. Authorizes the Director to transfer a certain percentage of funds between drug related programs after notifying the Appropriations Committees.

7. Designates the Director to serve as primary advisor to the President and Congress on national and international drug control programs and policies and on the implementation of those policies.

8. Authorizes the Director to temporarily reassign personnel between agencies, with the concurrence of those agencies, in order to implement drug control policies.

9. Authorizes the Director to assemble a staff to assist him in carrying out his duties.

10. Abolishes the While House Drug Abuse Policy Office.

11. Adds the Director to the National Security Council.

12. Terminates the Director's office after six years unless Congress determines that there is still a need for the position.

V. INTERNATIONAL EFFORTS

1. Provides for the procurement of weapons to defend aircraft involved in narcotics control efforts. $1 million for FY88 and FY89 to arm, for defensive purposes, aircraft used in narcotics control eradication or interdiction efforts. The funds are to be used on existing aircraft, and not to be used for the purchase of new aircraft. The Foreign Affairs Committee of the House and the Foreign Relations Committee of the Senate shall be notified at least fifteen days in advance of the use of these funds.

2. Provides funds for pilot and aircraft maintenance training for narcotics control activities. $2 million for FY88 and FY89 for training in the operation and maintenance of aircraft used in narcotics control interdiction and eradication efforts for countries in Latin America and the Caribbean.

3. Adds additional actions which the President shall consider in determining whether countries are cooperating fully with the United States: (a) has adopted laws to enable law enforcement officials to move more effectively against narcotics traffickers, such as new conspiracy laws and new asset seizure laws; (b) has expeditiously processed U.S. extradition requests; (c) has not protected or given haven to any known drug traffickers and has expeditiously processed U.S. extradition requests relating to narcotics trafficking made by other countries; and (d) has investigated the murders of U.S. personnel working in drug enforcement in that country who have been killed since 1985 and brought to trial and effectively prosecuted those responsible for such murders. Additionally, the criteria for entering into a mutual legal assistance agreement is changed from "willingness of such government to enter into" such an agreement to "has entered into."

4. Expresses the Sense of the Senate that the President should call for international negotiations for the purpose of establishing an international drug force to pursue and apprehend major international drug traffickers.

5. Expresses the Sense of the Senate that the President should convene an "International Conference on Combatting Illegal Drug Production, Trafficking, and Use in the Western Hemisphere."

6. Prohibits foreign assistance to countries which fail to take steps to prevent and punish drug-related corruption.

VI. IMPROVEMENTS IN JUSTICE FORFEITURE FUNDS

1. Currently, all expenditures from the Forfeiture Fund are scored as if having been appropriated under Subcommittee 302(b) allocations. Therefore, expenditures related to maintaining and disposing of assets, as well as funds shared with state and local authorities, are scored against the Commerce, Justice and State Subcommittee in Appropriations. The change would create permanent spending authority for the uncontrollable costs of the fund including asset management expenses and the sharing of payments with state and local agencies. This program has successfully enhanced local law enforcement efforts by recycling more than $100 million worth of criminal assets.

2. Stipulates that funds provided to state and local governments for their share of the seized assets should be spent to enhance the activities of law enforcement agencies.

3. (a) Directs the Attorney General to consider administrative changes that will increase the availability to state and local police agencies of the federal asset forfeiture laws; and (b) provides federal training for state and local asset forfeiture officials in the art of finding assets of drug dealers.

4. Expands the list of acceptable disbursements from the asset forfeiture funds to include purchase of surveillance equipment. This proposal will not increase the level of BA or outlays.

5. Expands rewards for citizens who report drug dealers to authorities. Funding would come from a pool of forfeited assets, with rewards up to $250,000 at the discretion of the Attorney General. (Current law permits the Attorney General to authorize rewards up to $150,000 or ¼ of forfeited assets, whichever is less, payable from the assets seized in a particular arrest.)

VII. LAW ENFORCEMENT

A. Immigration and Naturalization Service

1. Authorizes $40.7 million: (a) to enhance criminal investigations; (b) to provide 250 new border patrol agents and equipment; (c) to provide 80 new positions for the inspection division; (d) to design improvements to the San Clemente border patrol station; (e) for training; and (f) for demand reduction.

2. Exclusion or Deportation from U.S. of aliens convicted for possession or use of certain controlled substances. Provides for exclusion or deportation after serving sentence in the U.S. while providing a mechanism to assure that aliens are expeditiously deported in these cases.

3. Bars the reentry with visa of aliens deported on criminal grounds.

4. Eliminates bond for deportation proceedings for alien drug offenders.

5. Eliminates suspension of deportation.

6. Bars asylum or withholding of deportation for alien drug traffickers.

7. Eliminates most of the exclusions, including the drug exclusion, for deportation of a long-term permanent resident of the U.S. when reentering the U.S. from a temporary visit abroad.

8. Eliminates waivers based on family ties for alien drug traffickers.

9. Bars alien drug traffickers from voluntary departure.

10. Increases penalties for failure to comply with conditions of supervision.

11. Restricts the discretion of the courts to suspend penalties of alien drug offenders who disobey a final deportation order.

12. Permits deportation for possession of firearms.

13. Provides for summary exclusion for narcotic possession at port.

14. Provides wiretap authority for INS.

15. Expands INS authority for RICO violation.

16. Bars asylum and withholding of deportation for any aliens convicted of an aggravated felony.

17. Authorizes the INS to access the National Crime Information Center data base and other enforcement computerized indexes.

18. Subject to the supervision of the Attorney General, provides general law enforcement authority to immigration officers permitting them to enforce criminal violations of federal law encountered during the course of their duties, subject to the supervision of the Attorney General.

19. Permits limitation or denial of nonimmigrant visas to nationals of major drug producing or drug-transit countries which have neither cooperated fully with the United States nor have taken adequate steps on its own to prevent drug related activities.

20. Requires certified copies of conviction records to be provided to INS.

21. Requires the stamping of passports of drug convicted aliens at time of attempted entry into the United States.

B. Coast Guard

1. Coast Guard Law Enforcement Detachments (LEDET's) on Navy Vessels—Amends 10 U.S.C. 379 and 14 U.S.C. 637 to give Navy commanding officers and those acting under their orders, including Coast Guard LEDET's, the authority and protection currently in 14 U.S.C. 637 to shoot at vessels without being subject to personal liability when a Navy ship has a Coast Guard LEDET attached. (Submitted to Congress by the Secretary of Transportation 21 December 1987. Referred to the Senate Committee on Armed Services 16 February 1988.)

2. Requires the Secretary of Treasury, in consultation with the Secretary of Transportation, to submit draft legislation to Congress to restrict the ports of entry for vessels from drug producing countries, to require advance notification of arrival from these vessels, and to subject those vessels to quarantine and inspection. Also allows the Secretary to promulgate and charge fees for inspection services, as appropriate.

3. Crime of Possession—Amends the crime of possession under 21 U.S.C. 844 to include extraterritorial possession by a U.S. citizen or resident alien aboard any vessel or aircraft subject to the jurisdiction of the United States. (Submitted to Congress by the Secretary of Transportation 21 December 1987. Referred to the Senate Committee on Armed Services 16 February 1988.)

4. Amends the Maritime Drug Enforcement Act (46 U.S.C. 1901 et seq., previously 21 U.S.C. 955a): a) extends the Maritime Drug Enforcement Act to U.S. citizens aboard the vessel of any nation; and b) amends the Act to require operators of vessels which would otherwise be considered U.S. vessels, but for a valid foreign registry, to raise that foreign registry issue at the time of boarding.

5. Provides $6 million for 200 additional law enforcement personnel.

C. National Guard

2. Provides $60 million to be allocated between National Guard, Army: National Guard Personnel and Allowances, Air National Guard: Military Pay and Allowances, and Army Guard: Operations and Maintenance, as directed by Chief, National Guard Bureau.

D. Bureau of Alcohol, Tobacco and Firearms

1. Provides $20 million for 500 additional special agent positions to enforce: (a) 18 U.S.C. 924c—Use of a firearm in the commission of a crime; and (b) 18 U.S.C. 924e—three time loser in possession of a firearm, approximately 80 percent of such cases are drug related.

2. Provides $1.5 million for: (a) reimbursement of overtime pay for state and local law enforcement when such enforcement is used to assist BATF; and (b) to underwrite equipment for state and local law enforcement to allow BATF to work together with the state and local enforcement agencies.

E. National Forest Service

1. Grants general arrest authority to Forest Service law enforcement officers outside of the National Forest System with the exception of offenses falling under Title 21, the Controlled Substances Act, where Forest Service personnel are to act under cross-designation from DEA as provided by an MOU.

2. Authorizes the Secretary of Agriculture to deputize law enforcement officers of any other Federal agency, when the Secretary determines deputization to be economical and in the public interest, and with the concurrence of that agency, to exercise the powers and authorities of the Forest Service while assisting the Forest Service in the National Forest System, or for activities administered by the Forest Service.

3. Enhances the booby-trap provisions of the 1986 Anti-Drug Abuse Bill.

F. Drug Enforcement Agency

1. Provides $31 million to DEA for its airwing and technical support to bring the Agency to the President's budget request.

2. Provides $3 Million for El Paso Intelligence Center. EPIC coordinates all drug-related intelligence.

3. Provides $45 million for domestic investigations. This includes implementation of the precursor chemical provisions and $6 million for anti-gang activities.

G. Federal Bureau of Investigation

1. Provides $38 million for 910 additional special agent and support personnel positions to enable the FBI to effectively implement the National Drug Strategy over the period from 1989-1991.

H. State and local law enforcement

Authorizes $155 million in addition to FY 89 levels in appropriation bills for state and local law enforcement grants. This will raise the total program funding level to $225 million.

I. Budget

Requires the Administration's budget submitted to the Congress include a summary of Federal expenditures for drug enforcement, by agency, in each budget submission for the immediately preceding and upcoming fiscal years.

VIII. FUNDING

The total levels of spending and funding in the omnibus anti-drug bill are consistent with the procedures and spending limitations for an anti-drug initiative agreed to by the Senate and House in the Conference Report on the Fiscal Year 1989 Budget Resolution.

Mr. BYRD. Mr. President, let me comment anent what the distinguished minority leader has just said.

We have appointed a task force on our side of the aisle, and the distinguished minority leader has appointed one on his side of the aisle.

I met with Senator NUNN earlier this morning and suggested that we have a meeting this afternoon of the two groups and attempt, if we can, to have a bill ready to introduce and, hopefully, to act upon next week.

It would require a little time for the two sides to work together, to make certain decisions, and resolve certain questions. We do want this to be a bipartisan approach. We want a good bill. The Democrats have come up with an excellent package. The distinguished Republican leader has just indicated that his Senators have also come up with a good one. I think the two sides ought to get together. I am ready this afternoon, and I hope we can do that.

I asked my secretary to make calls earlier today, and I have had a meeting going on in my office concerning the drought. I have been running around here trying to unwind two or three snafus that have arisen on the pending bill.

It is still my plan, if the distinguished Republican leader and his task force people can get together this afternoon, to get together in my office and decide on an agenda, as to how we can go forward next week. I am ready to do that.

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, FISCAL YEAR 1989

The Senate continued with the consideration of H.R. 4776.

Mr. BYRD. Mr. President, I ask the distinguished Senator from Colorado: If Senators were willing to accept his amendment, would he agree to have it accepted? There are Senators, including the Senator's leader, who need to get out of here today at 2 o'clock. That is my understanding. I am trying to help everybody. I myself will be around.

If we accept the amendment, we can have a voice vote on it and have a final vote quickly on passage of this bill.

Mr. ARMSTRONG. Mr. President, several people have indicated to me that they would like to have a rollcall vote, and I would like to have a rollcall vote. So far as I am aware, there are no other speakers, and we could begin a rollcall vote at this time.

Mr. BYRD. I am sure we can do that. But there are Senators on my side who suggest that we should have a tabling motion or a point of order.

Now we are talking about not just one rollcall vote, but possibly a rollcall vote on a tabling motion first and then on a point of order, or vice versa, and still we have to vote on the Senator's amendment. I do not know how that might come out.

I am reminded of an incident which I think involved the former Senator Joe Clark of Pennsylvania. I am not saying it would happen in this instance. Senator Joe Clark offered an amendment, and Senator Harry Byrd, Sr., offered to take the amendment on a voice vote, to accept the amendment. Senator Clark insisted on a rollcall vote. He was greatly overwhelmed and his amendment rejected by the rollcall vote.

The Senator has a right to ask for a rollcall vote. He has that right. He may carry his amendment. It seems to me that if Senators will accept the Senator's amendment, let us do it on a voice vote. The distinguished Senator from Colorado could proclaim victory, and we would all go home.

That is my suggestion. I do not mind having a rollcall vote. I do not mind having two or three rollcall votes this afternoon. What I do want is to have this bill passed today. I know there are Senators who want to get out of here, and they are not all on this side.

I am in no position to accept the amendment. That is the manager's option. But I would recommend that it be accepted, if it can be done on voice vote, and we can pass this bill.

Senator NUNN also wants to have action on his conference report on the DOD bill, and he wants a rollcall vote on that.

So, why can we not resolve this particular question in favor of the Senator from Colorado, and go on and get these matters over with?

Mr. ARMSTRONG. Mr. President, if the majority leader is making a list of Senators who would like to depart the Chamber, may I be on it?

I happen to be one of those who think that whenever the Senate can complete its work, it is a good thing, and when it can quit early on a Friday afternoon, it is a good thing. I have no desire to delay this bill in the slightest, but I think this is a matter that requires a rollcall vote.

Mr. BYRD. The Senator is within his rights.

Mr. NICKLES. Mr. President, I think the Senator from Colorado is within his rights. He has asked for the yeas and nays. I think we have granted the yeas and nays on his amendment.

The Senator is within his rights if he wishes to make a point of order or move to table. I would like to see this issue resolved and pass the bill.

Mr. HARKIN. Mr. President, I make the point of order that the amendment constitutes legislation on an appropriations bill, under rule XVI paragraph 4.

The PRESIDING OFFICER. The point of order is not sustained.

Mr. HARKIN. Mr. President, I appeal the ruling of the Chair.

Mr. ARMSTRONG. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Shall the judgment of the Chair stand? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Arkansas [Mr. BUMPERS], the Senator from California [Mr. CRANSTON], the Senator from Connecticut [Mr. DODD], the Senator from Rhode Island [Mr. PELL], and the Senator from North Carolina [Mr. SANFORD] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

I further announce that, if present and voting, the Senator from California [Mr. CRANSTON] would vote "nay."

Mr. SIMPSON. I announce that the Senator from New Mexico [Mr. DOMENICI], the Senator from Washington [Mr. EVANS], the Senator from Oregon [Mr. HATFIELD], the Senator from Nevada [Mr. HECHT], the Senator from North Carolina [Mr. HELMS], the Senator from Nebraska [Mr. KARNES], the Senator from Alaska [Mr. MURKOWSKI], the Senator from New Hampshire [Mr. RUDMAN], the Senator from Connecticut [Mr. WEICKER], and the Senator from California [Mr. WILSON] are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon [Mr. HATFIELD] and the Senator from Connecticut [Mr. WEICKER] would each vote "nay."

The PRESIDING OFFICER [Mr. GRAHAM]. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 43, nays 40, as follows:

[Rollcall Vote No. 234 Leg.]

YEAS—43

Armstrong	Gramm	Quayle
Bingaman	Grassley	Reid
Bond	Hatch	Roth
Boren	Heflin	Sasser
Boschwitz	Heinz	Shelby
Byrd	Humphrey	Simpson
Cochran	Kassebaum	Stafford
D'Amato	Kasten	Stevens
Danforth	Lugar	Symms
DeConcini	McCain	Thurmond
Dole	McClure	Trible
Durenberger	McConnell	Wallop
Exon	Nickles	Warner
Ford	Pressler	
Garn	Pryor	

NAYS—40

Adams	Bradley	Burdick
Baucus	Breaux	Chafee
Chiles	Johnston	Nunn
Cohen	Kennedy	Packwood
Conrad	Kerry	Proxmire
Daschle	Lautenberg	Riegle
Dixon	Leahy	Rockefeller
Fowler	Levin	Sarbanes
Glenn	Matsunaga	Simon
Gore	Melcher	Specter
Graham	Metzenbaum	Stennis
Harkin	Mikulski	Wirth
Hollings	Mitchell	
Inouye	Moynihan	

NOT VOTING—17

Bentsen	Evans	Pell
Biden	Hatfield	Rudman
Bumpers	Hecht	Sanford
Cranston	Helms	Weicker
Dodd	Karnes	Wilson
Domenici	Murkowski	

So the ruling of the Chair was sustained.

Mr. BYRD. Mr. President, I move to reconsider the vote, and I qualify. I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Vote.

The PRESIDING OFFICER. The question is on agreeing to the motion to reconsider. All those in favor, signify by saying aye.

Mr. ARMSTRONG. Mr. President, may I ask the Chair to withhold putting that question for a moment while I consult my leader? I have been off the deck for a minute.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, I am grateful to the leader for giving me a moment to check the situation. I have every reason to believe that the result of a voice vote on reconsideration would be the opposite of the recorded vote we have just taken. It appears that on a voice vote we would reconsider whereas just a moment ago we sustained the ruling of the Chair. There is at least a probable outcome that a voice vote would reverse that decision, and, while I very much desire to expedite the process and I am reluctant to ask my colleagues to go through another rollcall, obviously I cannot willingly stand by and permit, by voice vote, the reversal of what we have arrived at by recorded vote. And so I must reluctantly, if the leader wishes to pursue this, I must reluctantly ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Arkansas [Mr. BUMPERS], the Senator from California [Mr. CRANSTON], the Senator from Connecticut [Mr. DODD], the Senator from Rhode Island [Mr. PELL], and the Senator from North Carolina [Mr. SANFORD], are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN], is absent because of illness.

I further announce that, if present and voting, the Senator from California [Mr. CRANSTON], would vote "yea."

Mr. SIMPSON. I announce that the Senator from New Mexico [Mr. DOMENICI], the Senator from Washington [Mr. EVANS], the Senator from Oregon [Mr. HATFIELD], the Senator from Nevada [Mr. HECHT], the Senator from North Carolina [Mr. HELMS], the Senator from Nebraska [Mr. KARNES], the Senator from Alaska, [Mr. MURKOWSKI], the Senator from New Hampshire [Mr. RUDMAN], the Senator from Connecticut [Mr. WEICKER], and the Senator from California [Mr. WILSON], are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon [Mr. HATFIELD] and the Senator from Connecticut [Mr. WEICKER], would each vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 42, nays 41, as follows:

[Rollcall Vote No. 235 Leg.]

YEAS—42

Adams	Gore	Mikulski
Baucus	Graham	Mitchell
Bradley	Harkin	Moynihan
Breaux	Hollings	Nunn
Burdick	Inouye	Proxmire
Byrd	Johnston	Pryor
Chiles	Kennedy	Reid
Cohen	Kerry	Riegle
Conrad	Lautenberg	Rockefeller
Daschle	Leahy	Sarbanes
Dixon	Levin	Simon
Ford	Matsunaga	Specter
Fowler	Melcher	Stennis
Glenn	Metzenbaum	Wirth

NAYS—41

Armstrong	Gramm	Pressler
Bingaman	Grassley	Quayle
Bond	Hatch	Roth
Boren	Heflin	Sasser
Boschwitz	Heinz	Shelby
Chafee	Humphrey	Simpson
Cochran	Kassebaum	Stafford
D'Amato	Kasten	Stevens
Danforth	Lugar	Symms
DeConcini	McCain	Thurmond
Dole	McClure	Trible
Durenberger	McConnell	Wallop
Exon	Nickles	Warner
Garn	Packwood	

NOT VOTING—17

Bentsen	Evans	Pell
Biden	Hatfield	Rudman
Bumpers	Hecht	Sanford
Cranston	Helms	Weicker
Dodd	Karnes	Wilson
Domenici	Murkowski	

So the motion to reconsider the vote by which the decision of the chair was sustained was agreed to.

DEPARTMENT OF DEFENSE AUTHORIZATION ACT—FISCAL YEAR 1989—CONFERENCE REPORT

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate the Department of Defense authorization bill conference report.

Mr. ARMSTRONG addressed the Chair.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4264) to authorize appropriations for fiscal year 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to rescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

Mr. DOLE. Mr. President, I ask——

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

Mr. ARMSTRONG addressed the Chair.

Mr. STEVENS. I object.

Mr. DOLE. I object.

The PRESIDING OFFICER. There is objection.

Mr. BYRD. Objection to what?

The PRESIDING OFFICER. To the immediate consideration of the conference report.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The bill clerk proceeded to call the roll and the following Senators entered the Chamber and answered to their names:

[Quorum No. 22]

Present

Adams	Gramm	Packwood
Armstrong	Grassley	Pressler
Baucus	Harkin	Proxmire
Bingaman	Hatch	Quayle
Bradley	Heinz	Rockefeller
Breaux	Inouye	Roth
Burdick	Johnston	Sasser
Byrd	Kassebaum	Shelby
Chafee	Kasten	Simon
Cohen	Kennedy	Simpson
Conrad	Kerry	Specter
D'Amato	Leahy	Stafford
Danforth	Levin	Stennis
DeConcini	Lugar	Symms
Dixon	Matsunaga	Thurmond
Dole	McCain	Trible
Ford	McConnell	Wallop
Fowler	Melcher	Warner
Garn	Mitchell	Wirth
Glenn	Nickles	
Graham	Nunn	

The PRESIDING OFFICER. A quorum is present.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order. The Senate will be in order.

The majority leader.

Mr. BYRD. Mr. President, the defense conference report is before the Senate; is it not?

Mr. ARMSTRONG. Mr. President, if the leader will yield——

The PRESIDING OFFICER. The report is not before the Senate.

Mr. ARMSTRONG. Is there a request to be laid before the Senate?

The PRESIDING OFFICER. The request was an inquiry to the Chair as to whether it was before the Senate, and it is not before the Senate.

Mr. ARMSTRONG. I beg the Chair's pardon. I did not quite understand. Is it neither before the Senate, nor is it the request that it be before the Senate?

The PRESIDING OFFICER. The request was of the Chair as to whether the defense authorization bill was before the Senate. The answer was no.

Mr. ARMSTRONG. I thank the Chair.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. What happened to the previous request that the conference report be laid before the Senate?

The PRESIDING OFFICER. There was an objection heard to the request.

Mr. BYRD. Then I move that the conference report be laid before the Senate.

Mr. ARMSTRONG. Mr. President, parliamentary inquiry. Mr. President at this time when the motion is pending to proceed to the conference report, it is my understanding it is a privileged motion but am I correct that it is in order prior to action on such a motion that it is in order for any Senator to request that the report be read?

The PRESIDING OFFICER. The Senator from Colorado is correct.

Mr. ARMSTRONG. Mr. President, I am loath to do that, but it is very clear what is going on here—that there is an attempt to delay action on an amendment which has been controversial, which has been debated at length, on which there has been a point of order, and on which the Senator's amendment has been sustained by the Chair. So I am loath to do so. If the leader is insisting on offering this motion, I will have no choice—I will indeed be constrained to ask that the conference report be read, with apologies to the reading clerk and the Senate.

DISTRICT OF COLUMBIA APPROPRIATIONS ACT—FISCAL YEAR 1989

The Senate continued with the consideration of the bill.

Mr. BYRD. Mr. President, I have great difficulty in pressing back the tears I am about to shed because of the Senator's situation.

Mr. ARMSTRONG. Mr. President, I regret that I cannot hear the Senator.

Mr. BYRD. I talked a little louder a little earlier today, and the Senator would not listen. I am not sure it would make a difference if he hears me or not now.

I had hoped that we could have a voice vote on the amendment and that the Senate could complete action on the bill and the Senate could go out. The Senator would have had his amendment adopted.

I agree with his amendment, in substance. I think the course we are following sets a bad precedent. The Chair had no alternative but to respond on the point of order in accordance with previous advice over the past few years. It is bad advice, and we are going to fight it. At some point the Senate should overrule the Chair on such a point of order.

If we hope to dispose of the appropriation bill and avoid these various and sundry amendments that constitute legislation on an appropriation bill, I think there has to come a time when the Senate has to face up to this business of setting a bad precedent.

I said on the record that I favor the Senator's amendment. There is no problem with me so far as his amendment is concerned. But I hope—looking forward to the time when I am going to be chairman of the Appropriations Committee—that the Chair can rule on points of order in a way that protects the appropriations process. We have to start at some point.

If the Senate wants to continue to establish a bad precedent, I will have to live with it. This is not a good precedent for the Senate to set, and the only way to avoid it is for the Senate to overturn the Chair and thus establish a correct precedent.

I have tried to avoid that today by simply having a voice vote on the Senator's amendment, putting this procedural fight over until another day. I do not want to have this fight this afternoon. I have not yet spoken on the floor as to why the precedent would be a bad precedent.

I have appealed to the Senator from Colorado to have some consideration for Senators who have to get out of town today, some of whom have already gone now, some of whom still need to go and cannot—to let his amendment go on a voice vote. He gets his amendment adopted by voice. He has already had two rollcall votes here for the record.

I would like to appeal to him again to let the Senate have a voice vote. I do not know of any Senator on this side of the aisle who is demanding a yea and nay vote. If there is, I would like to see the Senator's hand.

I would like to wait until another day to fight against setting a bad precedent. I would like to support the Senator's amendment. Let us accept it. Let us all go out of here happy and get out in time to catch our planes, see our grandchildren, go to the mountains of West Virginia, or wherever. You can see that I am needing a little fresh air.

So let me appeal to the Senator: Let us have a voice vote on his amendment and go home, and we will have the fight on the procedural question on another day.

Mr. ARMSTRONG. Mr. President, if the Senator will yield——

The PRESIDING OFFICER. The Chair notes that we are having debate on a nondebatable motion.

Mr. BYRD. Mr. President, I ask unanimous consent that I may proceed for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ARMSTRONG. I ask unanimous consent that I may also proceed for 5 minutes.

Mr. BYRD. I yield 4 minutes to the Senator right now.

Mr. ARMSTRONG. I thank the Senator.

It is very difficult to be unresponsive to the request of the majority leader, but it is not impossible.

In this case, I cannot do what he suggests, nor do I think it would be proper for me to do so. Indeed, let me say to the leader that I think the various points he has made illustrate why a number of Senators have expressed to me the desire to have a recorded vote on the substance of the amendment.

Mr. BYRD. Mr. President, will the Senator yield on that point?

Mr. ARMSTRONG. I yield.

Mr. BYRD. The Senator earlier said that somebody on my side wanted a yea or nay vote on the amendment. The Senator said in the well that there are Senators on my side who wanted a rollcall vote. I have not observed that to be the case.

Mr. ARMSTRONG. The leader is correct. There are Senators on both sides of the aisle who have expressed that hope to me. But the point the leader made was that he, himself, had voted differently on the point of order than he would intend to vote on the substance of the amendment; and if we do not have a vote on the amendment itself, it leaves the Senators in an equivocal position.

The notion that, somehow, the Senator from Colorado is drawing out the process is not borne out by the facts. I was ready to vote at 1 o'clock, 1:15, 2:20, 2:25. I am ready to vote now.

With respect to the question whether we have to argue about the precedent, that issue has been settled. The Chair has ruled. An appeal from the ruling of the Chair was made, and the Chair was sustained. In other words, the precedent situation is the same as it has been for many years. There is no change.

The majority leader does not like the precedent; and in some ways—I have not heard his arguments—I think I might be willing to join him in amending the rules with respect to legislation on appropriations bills. I do not want to precommit to that, because I have not heard his arguments.

I come from a tradition which is more restrictive about such amendments than is the Senate practice. The point is that that has been settled. There is no need for that to come up further at this time, unless the leader or some other Senator wishes it to. We have had the ruling and the debate and have had a vote on the appeal of the ruling of the Chair, and the Chair has been sustained.

All we need is to vote on the substance of the issue, and I am gratified that the leader expresses himself as favorable to my amendment. I think there are Senators who are not amenable to the procedural question who will be in favor of my amendment.

So let us vote and go home.

Mr. BYRD. Mr. President, the rules do not need to be changed. The rules already provide that there be no legislation on appropriations bills. It is a precedent we are talking about—one that would be a bad precedent.

I am trying to get the Senator to let the Senate vote on his amendment by voice vote. There are Senators over here who prefer to move to table, some prefer to make a point of order. I prefer to have a voice vote on the amendment and get out of here.

The Senator may win or he may not win on the vote to reconsider. I do not know how many Senators are here now. He may have lost more Senators on his side of the question than we have lost on our side.

It seems to me, Mr. President, that it is a very unreasonable attitude. With all due respect to the Senator from Colorado—and it is any Senator's right to insist on a rollcall vote—I think it is very unreasonable for the Senator who has offered his amendment, and I have said let's accept it, and "Let's voice vote it," to insist we have a rollcall vote. Yet, he says he is not holding up the Senate. I made this same offer to him an hour and a half ago, right here on the floor, to have a voice vote and adopt his amendment.

Mr. President, I can be as stubborn as the next Senator, but I do not think we ought to try to see who can be the

most stubborn and the most bullheaded.

I can be as bullheaded as anybody else if that were the point to be served, and say, "OK, lay on, Macduff, and damn be him who first cries out 'enough.'"

But there is no point in such bullheadedness. We will fight this battle another day.

Let us go ahead and have the rollcall vote on the Senator's amendment.

If he wins, which he will, well and good.

I have said before where I stand on the substance of his amendment, but I have also said this is bad precedent and there are a lot of Senators in here who have not been here for 30 years, who have not had to stand on this floor for 22 years and fight battles over precedents, and some of those Senators are on my side of the aisle.

Yet when it comes to trying to avoid hurtful precedents that will be here long after this majority leader is not even a Member of the Senate, my colleagues ought to give some consideration to procedure over substance in such a situation.

Mr. President, I ask unanimous consent to proceed for 5 additional minutes.

The PRESIDING OFFICER (Mr. WIRTH). Without objection, it is so ordered.

Mr. ARMSTRONG. Mr. President, I ask unanimous consent to also proceed for 5 minutes.

Mr. BYRD. Mr. President, I yield the Senator 4 minutes of my 5.

Mr. ARMSTRONG. Mr. President, I reserve my time.

Mr. BYRD. Sir?

Mr. ARMSTRONG. I just said I would like to reserve my time.

Mr. BYRD. Mr. President, if there is any Senator who is not persuaded, by what he is hearing just now, to vote the way this majority leader will vote in this procedural matter, it would be cause to wonder, who hears what is being said now and is a witness to what is going on should for this one time say: "I am going to stand with the majority leader. The majority leader has tried to resolve this matter. He has tried to save the time of everybody. And he is trying to move the legislation and he is trying to avoid a bad precedent. He is even willing now to let the vote go forward because he says he does not want to win in a contest of bullheadedness and this is one time I am going to support the majority leader."

I will tell you one thing when I am no longer majority leader and I am sitting in one of these chairs and I see what is going on here now, I am going to vote with my majority leader in a procedural situation of this nature.

So I am going to give the Senator from Colorado the whole 5 minutes. I ask unanimous consent that the Senator may proceed for 5 minutes and then, Mr. President, let us have a rollcall vote.

The PRESIDING OFFICER. First of all, before we proceed, the majority leader will have to withdraw his motion to proceed.

Mr. BYRD. I withdraw my motion.

The PRESIDING OFFICER. The Senator has that right.

Then, without objection, that is done.

We would then move to vote on the appeal of the ruling of the Chair. The majority leader is correct.

Mr. ARMSTRONG. Mr. President, may I propound a parliamentary inquiry?

The PRESIDING OFFICER. The Senator will state it.

Mr. ARMSTRONG. It would be my understanding that if the leader wishes to press the vote on the question of sustaining the Chair, that would be a debatable motion. It is not my desire to have a vote on that issue. We have had a vote on it already, and if that is the vote he wishes to vitiate, that would be perfectly agreeable to me.

However, if it is the intention of the leader to go to a vote on that, then I would like to have an opportunity to discuss on its merits the ruling of the Chair, which I believe to be a correct one and in accordance with the precedents of the Senate.

It seems to me that would be better put off to another time, but we cannot have it both ways. We cannot both press for a decision on that issue, particularly after making the appeal to the leadership, and so on, which is a proper appeal, but there is another appeal also and it is an appeal Jefferson spells out so well about the importance of the rules of this body.

So I just want to clarify that if we are going to go down that track, and I am glad to vitiate that and get to the substance of the amendment, but if we are going to go down that track, then I intend to at least state my views on the question of whether or not the Chair should be sustained and debate that issue on its merits.

Moreover, I am advised that some other Senators have views on that as well which have nothing to do with my amendment because in reality, let me say to everyone who has offered an amendment to an appropriation bill, if for some reason the Chair were not sustained, if the Chair were not sustained, if we overturn the ruling of the Chair, we would be overturning years of precedent in a way which I think most Senators have not thought about fully and I would assume they would want to consider that as a separate question from the underlying amendment.

But I just wanted to clarify that would not be an automatic process but it would simply be the pending question before us.

The PRESIDING OFFICER. The Chair would note that the Senator from Colorado has a parliamentary inquiry and the Chair will ask if the Senator from Colorado would like to state the parliamentary inquiry?

Mr. ARMSTRONG. My parliamentary inquiry is, when we get to that point, is the question a debatable issue?

The PRESIDING OFFICER. The Senator is correct. It is debatable.

Mr. ARMSTRONG. I thank the Chair.

Mr. BYRD. Mr. President, I ask unanimous consent to proceed for 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

The majority leader is recognized.

Mr. BYRD. Mr. President, is the Senator saying that he does not want a vote on the motion to reconsider?

Mr. ARMSTRONG. If the Senator will yield, I have no desire to vote.

Mr. BYRD. Is that not the pending question before the Senate?

The PRESIDING OFFICER. The pending question now is the appeal of the ruling of the Chair, which is debatable.

Mr. BYRD. No. The Chair misunderstood me.

The PRESIDING OFFICER. I am sorry.

Mr. BYRD. The Chair misunderstood me.

The PRESIDING OFFICER. Will the majority leader then restate it?

Mr. BYRD. I did not ask that the motion to reconsider be withdrawn. Obviously that is what the Chair understood me to say.

The PRESIDING OFFICER. The motion to reconsider has been agreed to. The Chair understands the majority leader had asked to withdraw the motion to proceed to consideration of the DOD conference report.

Mr. BYRD. What I was seeking to withdraw was my previous request that the Chair lay before the Senate the conference report.

The PRESIDING OFFICER. That is the Chair's understanding. The Chair has said it is within the majority leader's right to withdraw his motion to proceed to the consideration of the DOD conference report.

Mr. BYRD. All right. I thought someone had objected to that.

The PRESIDING OFFICER. No.

Mr. BYRD. Now, Mr. President, does the Senator want to proceed with a vote on the appeal?

Mr. ARMSTRONG. I have no desire to do so. My desire is simply to proceed to vote on the amendment and then final passage of the bill.

Mr. BYRD. Does the Senator object to withdrawing the appeal and then

having a motion to table, voting on a motion to table; is that agreeable.

Mr. ARMSTRONG. Voting on a motion to table my amendment?

Mr. BYRD. Yes.

Mr. ARMSTRONG. No, I would have no problem with that at all. But I would like to make this observation about it. The very reason that I want to have a vote on the amendment is so that no Senator would afterward be in a position of having voted one way or another on a procedural question and have that position attributed to him or her as their position on the underlying amendment.

So let me just announce in advance that with the agreement of the leader we would regard the vote on the tabling motion as final, that if the tabling motion succeeds that settles the issue; if the tabling motion fails that also settles the issue. If the tabling motion fails, I suppose other motions and various dilatory tactics would be available.

My thought would be we just have a gentlemen's agreement, not a unanimous consent, but just a gentlemen's agreement that would be the end of it, that we did away with further appeals of the ruling of the Chair, leave the precedent as it stood when the day we began and come back to that another time, and then proceed to a vote on my amendment, and if it is the desire of the Senator from Iowa or others to move to table it we regard the tabling motion as conclusive win, lose, or draw. So that would get us to the point where we just have a vote on that and then final passage.

Mr. BYRD. Mr. President, I think the Senator's proposal is a reasonable one. That would allow the battle over precedent to await another day. That matter has not been resolved today because the appeal has not been voted on, and if we could remove the appeal and the point of order by unanimous consent and let the Senator or any Senator move to table if that is the wish, I would much prefer to have the voice vote and accept the Senator's amendment, but if that is not agreeable to the Senator from Colorado we could have a rollcall vote.

Mr. ARMSTRONG. We get there simply by withdrawing the pending motion to appeal the ruling of the Chair?

Mr. BYRD. Yes.

Mr. President, I ask unanimous consent that the appeal be withdrawn and that the ruling of the Chair be vitiated.

Mr. JOHNSTON. Mr. President, reserving the right to object.

Mr. ARMSTRONG. No, no, no.

Mr. BYRD. And that the point of order be considered as having been withdrawn. And that puts the Senate right back in the position that it was before the point of order was made.

Mr. ARMSTRONG. Mr. President, that is a wrinkle I had not thought about.

May I ask the leader to withhold while I consult my counsel on that? It seems to me the ruling of the Chair is entirely consistent with all past precedents.

Mr. BYRD. The ruling of the Chair is in accordance with past advice from the Chair but the past advice was bad.

Mr. ARMSTRONG. Mr. President, that being understood, would there be any reason, then, to consider the ruling to have been vitiated or the point of order to have been withdrawn?

Mr. BYRD. I would kind of like to leave the matter where it was ab initio, without putting another nail in the coffin.

Mr. ARMSTRONG. What does the term "ab initio" mean?

Mr. BYRD. Surely the Senator understands that it means "from the beginning."

Mr. ARMSTRONG. No, the Senator, as far as I can recall, has never heard that expression before. But you can learn a lot hanging around the Senate.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The majority leader has the floor and has propounded a unanimous-consent request.

Mr. HARKIN. I wonder if the distinguished majority leader would yield to me for a question to the Chair without losing the majority leader's right to the floor?

Mr. BYRD. Yes.

Mr. HARKIN. I would like to inquire of the Chair—there has been a lot of talk about precedents. It is this Senator's understanding, I wonder if this is correct, that the point in question concerning the amendment offered by the Senator from Colorado, that, in fact, this has really not been a precedent that has been joined by the Senate but, in fact, has been a procedure that has been observed over the last several years without having been really joined as a precedent. The question I have is: Has a precedent been established by the Senate that permits this type of an amendment as offered by the Senator from Colorado on an appropriations bill?

The PRESIDING OFFICER. No such precedent has been established.

Mr. ARMSTRONG. Mr. President, if whoever has the floor would yield to me, I am prepared now to comment on and accept the leader's suggestion.

Mr. BYRD. Mr. President, I withdraw my request for the time being.

The PRESIDING OFFICER. The majority leader has withdrawn his request.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, the pending question before the Senate is the appeal of the Chair's ruling on the point of order; am I correct?

The PRESIDING OFFICER. The majority leader is correct.

Mr. BYRD. Mr. President, it does not seem to be reasonable to believe that reason will indeed prevail in the Senate today. The Senator from Colorado is insisting on his rollcall vote on the amendment which could easily have been adopted on a voice vote. There are Senators who, while willing to go on a voice vote, prefer to follow the point of order that has been made, believing that the Senate itself ought to speak on the precedent that would be set, a procedure on which the Senate itself has never spoken. I would like to see that procedure ended. I very much do not want to see it nailed down by a Senate vote as a bad precedent.

So I ask unanimous consent that, when the Senate completes its business today, it stand in recess until the hour of 10:30 on Monday.

Mr. ARMSTRONG. Reserving the right to object—and I enter that reservation only to comment on what has been said.

Having discussed the matter with my legal counsel, I was prepared and I am prepared to accept the recommendation or suggestion that the leader made that we simply restore the situation as it was in the beginning; that is, in effect, to vitiate the point of order and vitiate the ruling of the Chair. I was not certain, when it was raised a moment ago, what the effect of it would be. But, as I understand the effect of the leader's suggestion, it would be simply to leave things as they were; that is, to leave the precedent in order. I think that would be, in effect, the same thing as what has happened anyway, because the ruling of the Chair, which was sustained by the body, was consistent with the past precedent, in my opinion.

Mr. BYRD. Will the Senator yield?

Mr. ARMSTRONG. Yes.

Mr. BYRD. That precedent has not been decided yet. There was a vote to reconsider, but the Senate has not finally acted any more than it has finally acted on the override of the President's veto of the trade bill.

Mr. ARMSTRONG. Yes. I believe that that is a correct characterization by the leader. All I am saying is that upon advice of counsel, I am perfectly willing to accept his recommendation that we simply dispose of that question, just lay it aside to come up an-

other time and then go ahead with the bill if that is his desire.

Other than that, if it is his desire to come in at 10:30 Monday and continue, that is OK with me, too.

Mr. BYRD. That was my desire, that we vitiate everything and let the Senate put this fight off until another day when all Senators will be here. We could make our case and let the Senate hopefully overturn the procedure that has been influenced by the advice of the Chair over the period of several years, but advice in which the Senate has never made a decision itself.

But now I understand there are some Senators who want to proceed and not vitiate, leaving the matter——

Mr. ARMSTRONG. I understand, but I just want to be clear that it was not this Senator who disagrees with this process.

Mr. BYRD. I understand that.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request propounded by the majority leader?

The Chair hears none. It is so ordered.

Mr. BYRD. Mr. President, if the Chair will allow me, just for 2 or 3 minutes, to hold the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BYRD. Mr. President, I think I will renew my request again so that the battle over setting a precedent can await until another day. The so-called precedent has never been decided by the Senate. It has only been advice by the Chair and Senators have been willing to go along with the advice of the Chair; even though this Senator believes those advisory opinions of the Chair have been wrong and I believe that the Parliamentarian agrees in his own mind with that, but he is bound by the previous advice given by the Chair, given before he became the Parliamentarian. Consequently he has no alternative but to abide by the previous advice of the Chair.

I am hoping that that procedure can be overruled and if Senators will agree to this request, we will let that fight go to another day and perhaps we can work our way out of the immediate problem. And if the Senator from Colorado still insists on a rollcall vote, as far as I am concerned, let's go with it.

If the Senator from Iowa wants to move to table and have a vote on that motion, that is fine with me.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD. So, Mr. President, I ask unanimous consent that the appeal be withdrawn; that the ruling of the Chair be vitiated; that the point of order be withdrawn, which puts the Senate back in the status quo ante with respect to the amendment.

The PRESIDING OFFICER. Is there objection?

Mr. ARMSTRONG. Mr. President, reserving the right to object, may I just commend the leader for this resolution of that aspect of the business before the Senate. I thank him for his actions.

The PRESIDING OFFICER. Is there objection to the unanimous consent request? The Chair hears none. It is so ordered.

Mr. BYRD. Mr. President, I thank the Senator.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, we are now, then, about to vote on the disposition of the amendment offered by the Senator from Colorado. I do not want to take a lot more time. I know it is late on Friday and people want to leave. I want to make sure Senators know exactly what they are voting on and what the implication of that vote will be.

Mr. ARMSTRONG. Mr. President, will the Senator yield for just a moment?

Mr. HARKIN. Without losing my right to the floor.

Mr. ARMSTRONG. Of course. It is perfectly agreeable to me to have the vote this afternoon or to put it over, but our Cloakroom is now scurrying around because the majority leader mentioned 10:30. He did not say there would be no more votes, but there was a general impression that perhaps votes were not likely soon.

Is it the Senator's intention to go ahead and vote this afternoon? If that is his intention, I just want to start bringing our people back if they are available.

Mr. BYRD. Mr. President, it is perfectly all right with me to vote this afternoon.

Mr. HARKIN. Vote this afternoon.

Mr. ARMSTRONG. I appreciate the Senator's——

Mr. BYRD. Have the vote now. I have had my headache temporarily cured. I will put it off to another day, and suffer again.

Mr. ARMSTRONG. Mr. President, I thank the Senator for yielding. I gather it is the plan that we will vote relatively soon, and I hope our Cloakroom will then hot line the offices and to the extent we are able at least bring all Senators back to the floor. I will speak for a very few minutes and then have a vote.

Mr. HARKIN. Mr. President, there may be at least two more votes today. I want to take just a few moments, after all of this scurrying about on the procedural issue on the precedents, to say a few words about the amendment itself so the Senators can know exactly what we are voting on.

Several years ago, individuals at Georgetown University, calling themselves "The Gay People of Georgetown University," wanted to organize themselves into a group. They wanted Georgetown University to recognize them as a group.

Georgetown University, being a Catholic university under the auspices of the Society of Jesus, otherwise known as the Jesuits, refused to do so saying it was not in keeping with the teachings of the Catholic Church that they be recognized. There ensued a lawsuit which took several years through the courts.

The final disposition of the court case was that, in fact, Georgetown did have to comply with the law. The law, however, did not require recognition, but it did require Georgetown to treat this group equitably with other groups and to not discriminate. Therefore, an agreement was reached between Georgetown University and the gay people of Georgetown University.

The agreement was this: That Georgetown would give this group all of the benefits of any other group—the stamp collectors, the choir, and other groups. They would have the same benefits. They could have a phone; they could have an office, and again I will quote from a letter of Father Healy, the president of Georgetown University, to the faculty and alumni:

> . . . the court said, "The act only requires Georgetown to grant the groups the tangible benefits associated with university recognition."

These benefits included office space, telephone, copying facilities, access to mailing lists, listing in various handbooks, a mailbox and the right to apply to the student government for an annual budget.

Georgetown University had settled the matter, and they settled it in a fair and equitable manner in keeping with the religious tenets of the Catholic Church. Now comes an amendment offered by the Senator from Colorado that says, "No, Georgetown, you can't do that." His amendment says: "Notwithstanding any other provision of the laws of the District of Columbia, it shall not be an unlawful discriminatory practice * * * for any educational institution," such as Georgetown, "* * * to deny, restrict, abridge, or condition * * * the use of any funds, service, facility, or benefit * * * "

So what the Senator is doing is he is offering an amendment to undo what Georgetown University has already agreed to do. That is why this amendment is so onerous.

I have a statement here from Georgetown University that says they did not initiate this amendment; they were not behind it. They did not learn of it until yesterday.

Finally, I want every Senator to also know what this amendment says. It says that "None of the funds appropriated by this act shall be obligated or expended after December 31, 1988, if on that date the District of Columbia

has not adopted" his language, the language of the Senator from Colorado. That means that the District Council would have to adopt this language. If it does not, the whole District government is shutdown—no snow removal; no police; no fire protection; nothing. He does not say "Federal funds." He says "all funds," including those funds raised by the District of Columbia.

I heard a lot of Senators come on this floor when we had the point of order and the appeal of the Chair and say, "Oh, I can't vote for homosexuals, a homosexual issue. I'll get killed at home if I vote for those homosexuals."

That is not the issue here. Georgetown University has taken care of that issue in a fair and equitable manner. The issue is whether or not this Chamber is going to vote to tell Georgetown University and other universities that may be religiously oriented what they can and cannot decide to do on their own.

What the Senator from Colorado is saying is, "I know better than President Healy of Georgetown University." He even knows better then the Catholic Church about what is good for Georgetown University by offering this amendment. No, it is not enough that Georgetown has already met with these students and has agreed to give them the benefits. No, the Senator from Colorado says, "I know better than you, so we're going to do it" his way. Not only that, we are going to tell the District of Columbia they cannot even use their money unless they adopt this amendment.

I guess the votes are there to adopt the amendment of the Senator from Colorado. I guess people will vote for it because they are perhaps somewhat loath to vote on an issue addressing the problems of homosexuals and gays, at least down in the city of the District of Columbia.

This does not get to anything like that at all. This just says basically that a religious institution, like Georgetown University, could, if they want, deny to a gay group the benefits that the courts have already said they can give to them and which Georgetown has already acceded to.

I have a lot of respect for the Senator from Colorado. He is a decent and good individual. But I do not think he knows more than Georgetown University or the people who run it or the president thereof or the Catholic Church in their own decisionmaking process in reaching this point.

As I said, I can get pretty exercised about this amendment because it strikes at two things that I feel strongly about: The right of an educational institution to make its own decisions about which groups it will recognize, which groups it will provide access to the benefits of the schools and which it will not, and also strikes the heart of the District of Columbia to make its own laws regarding this.

In addition it would overturn a court decision made by the District of Columbia courts. But as I understand it, I guess the votes are there for his amendment. I can say, this Senator is going to be the Chair of the conference, and we will see what happens there.

Mr. President, I move to table the amendment.

Mr. ARMSTRONG addressed the Chair.

Mr. HARKIN. I move to table the amendment.

Mr. ARMSTRONG. Mr. President, will the Senator withhold for a moment? I think the Senator is aware——

Mr. HARKIN. I move to table the amendment.

Mr. ARMSTRONG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. ARMSTRONG. On what are we calling the roll?

The PRESIDING OFFICER. To ascertain the presence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ARMSTRONG. Mr. President, I ask unanimous consent to dispense with further proceedings under the quorum call.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. ARMSTRONG. Mr. President, I would like to take a moment to sum up where we are and I thank my friend from Iowa for——

The PRESIDING OFFICER. If the Senator from Colorado will suspend, the Senator from Iowa had moved to table the amendment offered by the Senator from Colorado.

Mr. ARMSTRONG. Will the Senator withhold the motion?

Mr. HARKIN. I ask unanimous consent to withdraw the motion.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Colorado is recognized.

Mr. ARMSTRONG. Mr. President, I thank the Senator for his courtesy. It is my belief that in both cloakrooms we are hotlining the offices, and to the extent that Senators are still in town they are being advised that a vote is imminent. I regret to say that I think on both sides a number of Senators may have interpreted developments on the floor that we would not have a vote this afternoon, and so we may have a fairly sparse attendance when the vote comes. But nonetheless, to the extent that they are within reasonable driving distance, we would like to give them a few minutes extra to return.

Mr. President, while that occurs, I should like to take a moment or two to respond to some of the issues which the Senator from Iowa has raised.

First of all—and I do this cautiously because the general tone of the debate we have had on this has been very friendly—in a personal reference to me a moment ago, the Senator from Iowa made the point that I have said that I know better than Georgetown University what is good for the university.

I do not believe I have said that. I do not think on any occasion during this debate I have made any statement that could be remotely so characterized. Nor is that the feeling which I have in my inner heart. I do not think I have said anything or in any way, through my amendment, material I have submitted for the RECORD, or otherwise given that impression.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. ARMSTRONG. I do not feel that way.

Mr. BYRD. Will the Senator yield after he finishes his sentence?

Mr. ARMSTRONG. Could I finish the paragraph and then I will be happy to yield.

Mr. BYRD. Yes.

Mr. ARMSTRONG. Indeed, it seems to me that for my amendment to be interpreted as an indication that I know better than Georgetown what is good for Georgetown stands the amendment on its head. What my amendment says is let Georgetown decide; let Catholic University decide. It does not say what they have to do or what they must not do. It says that if in their judgment they wish to withhold certain kinds of facilities, certain kinds of prerogatives, certain privileges, forms of recognition, and so on, it shall be their right to do so with respect to groups who advocate homosexual behavior. It does not say that I am telling these groups they cannot have such facilities. In fact, were that the rule, I would be very much against that. I do not think that because I disagree with homosexuality or adultery of some other kind of moral misbehavior, I have the right to impose my belief on other people, certainly not on the university, under ordinary circumstances.

Now, there are occasions when that conviction and belief rises to the level where it is a matter of law. For example, I have a belief against certain kinds of violence—murder and other kinds of violence. We have decided that that ought to be against the law. But that is not the case with respect to the issue here. This is a religious freedom, an academic freedom issue: May the university be required to furnish facilities to a group whose stated purpose is anathema to the teachings of the church which founded and operates the university.

That is the first point I wanted to make, and I will be happy to yield to

the leader now if he wishes. I have some other points and I will be pleased to continue, but I will be glad to yield to the leader at this point if he would like me to do so.

Mr. BYRD. Mr. President, I thank the distinguished Senator. If he would continue just for a minute or so and let me have a conversation and then yield.

Mr. ARMSTRONG. I will be happy to. I actually have four points to make at this point. The second one is that this home rule is really misplaced. I am a believer in home rule. I think the notion of home rule is just good government, particularly to the extent that we can bring together in the same place the responsibility for raising the funds and expending them, particularly to the extent that the people who make the laws have to live under them.

Home rule in the case of the District of Columbia is very clearly a conditional matter. Under the Constitution of the United States and under the home rule statute which established the home rule status of the District of Columbia, Congress specifically retained, held to itself, the right to enact and amend legislation for the District of Columbia. We have that right. And having the right, Mr. President, we have the duty. Where the cause is just and the case is important enough, we have the solemn responsibility to exercise the power, the legal duty that we have.

We did not hesitate to do that with respect to States that have a speed limit that exceeds what Congress thinks is justified. We say to them pretty much as this amendment does, that if you have a speed limit faster than so many miles per hour, you lose your highway funds. And for that matter if you put up or permit to be put up along the highway, billboards that do not conform to the Federal standard, then we are going to strike down your highway money or we say to them—and I support this, by the way—if you do not take whatever measures are necessary to reduce the air pollution in your area below a certain amount, you are going to lose not only highway funds but we going to clamp down on construction of public and private projects.

I think that is justified, though it is an extreme measure. So we do it all the time and we do it very frequently with respect to the District of Columbia where the Congress retains plenary power. We are doing it in this bill with respect to residency requirements. The House has one version of a residency requirement; the Senate has put into its bill a different version. To so say that we should not do this, even though we may agree in principle that a church college should not be required to give aid and support and facilities and stamps and mailboxes and computer lists to a homosexual organization, that even though we agree with that principle, the home rule principle is more important, is really very hard to sustain in the fact that we do so often legislate for the District of Columbia.

Now, Mr. President, before I go on, I would like to ask, is the Senate in order?

The PRESIDING OFFICER. Is the Senator from Colorado making a point of order that the Senate is not in order?

The Senate will be in order.

Mr. ARMSTRONG. I thank the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. The third point I want to make. Mr. President, is that this issue is not moot, despite what has been said about the consent decree of the Georgetown University officials with the homosexual group involved. This is not a moot issue. I do what to emphasize that from conversations with the university officials they do not intend to abrogate that agreement. Whatever happens to this amendment, they have agreed to it in good faith. They have undertaken it in good faith. They are going to live up to it. So it is not a question of what happens with that group. It is what happens with the next group and the one after that and all the groups that may be standing in line to request, to demand, even to sue for, privileges under this bill.

When you get right down to it, the question was summed up about as well as anybody could by Doug Bandow, who wrote on this subject. He sort of summarized what happened. I want to quote briefly from an article which I previously inserted in the RECORD which I did not share with those who are on the floor. It comes from the New York City Tribune, April 7 this year. He gives some of the background about it, about the District of Columbia, and so on. And then he gets to what has happened, I now quote:

In 1977 the district passed an ordinance forbidding discrimination on the basis of sexual orientation. Naturally no exemption was provided for religious institutions; in this city the government, not God, is considered to be the supreme arbiter of morality.

Located within the capital is Georgetown University, a Catholic school chartered directly by the Vatican, Georgetown takes its doctrine seriously and believes, as do all Bible-based Christian faiths, that homosexuality is wrong.

That doesn't make gays unique, of course; adultery, for instance, is also a sin. But there are as yet no adulterers' organizations demanding official recognition of their members' lifestyle.

There are gay groups, though, and they wanted Georgetown to provide them with office space, support servcies, funds and access to school facilities. The university, not surprisingly, said no. For to subsidize homosexual organizations would be to support an orientation that violated fundamental Catholics tenets.

So the students, with the support of the D.C. "Human Rights Office"—which believes in protecting everyone's human rights except those of traditional Catholics—sued. And last fall the district's Court of Appeals ruled that Georgetown, while it needn't technically "recognize" the gay groups, had to grant them the same "tangible benefits" that it provided other organizations.

Georgetown decided not to appeal, settling the case on March 29. The school won't have to host gay religious ceremonies or meetings with a largely non-university audience, but Georgetown will still be forced to subsidize gay groups.

I am going to skip over now a few paragraphs of the article and come to the conclusion which Mr. Bandow draws. He says:

The point is, homosexuals have no right to force others to accept or support their lifestyle. Certainly government has no business discriminating against them: Anti-sodomy laws, for instance, are a vicious intrusion in the most intimate form of human conduct. And gays who pay taxes have as much right to government services and employment as anyone else.

But someone who decides to live openly as a homosexual should accept the disapproval of those around him. For many Americans still believe that there is a fundamental, unchangeable moral code by which men are to live.

Vindictive personal discrimination against gays, in contrast to disapproval of their conduct, is wrong, and even un-Christian, since Jesus commanded his followers, who are sinners like everyone else, to love their neighbors, but it is not a public matter. Using government to bludgeon homophobics into submission is even more intolerant than the original discrimination.

And gays certainly shouldn't expect to be subsidized by those who are offended by their lifestyle. Georgetown's homosexual students may reject biblical teachings, but no one forced them to go there. If they want to attend a university that recognizes their sexual preference, they should have enrolled somewhere else.

Indeed, to show up at a Catholic school and demand that it fund gay activist groups is, well, more than chutzpah. It is both selfish and spiteful, a calculated effort to trample someone else's fundamental beliefs for ideological purposes.

This is from the article by Doug Bandow. I think it is significant, even though I do not agree with all of what I just read to you. In part, I disagree with it. But here is a person who is a libertarian, a person who is extraordinarily permissive towards homosexuality——

Mr. SYMMS. Mr. President, could we have order in the Chamber so we can hear the Senator from Colorado?

The PRESIDING OFFICER (Mr. DECONCINI). The Chair does not observe the Senate is not in order. The Senator is entitled to be heard. The Chair is listening to him. Is there someone who cannot hear the Senator from Colorado?

The Senator may proceed.

Mr. ARMSTRONG. I thank the Chair. I thank my friend from Idaho.

The point I was making is simply from a different part of the philosophical spectrum than I myself occupy, here is a person who is more permissive than I am inclined to be toward homosexuality who nonetheless makes the point that it is wrong or, as he puts it, selfish and spiteful, a calculated effort to trample someone else's fundamental beliefs for ideological purposes to require that the university give facilities and support to an organization which is anathema to it. That is the point.

The issue is religious liberty. It is not tolerance, not whether you are for or against homosexuality. That cuts a lot of different ways and is a subject for individual conscience, and debate on another occasion. This question is whether we are going to force a church university to provide facilities for someone which is contrary to the very essence of the church.

Mr. President, I have two or three other points I would like to make. But I believe, based upon some signals I am receiving, that perhaps it would be timely for me to sum up and just say that when the time comes I hope Senators will support my amendment. It appears to me that perhaps the managers of the bill and the leader have worked out a time for that vote to occur. Whether it is today or next week is a matter that I am indifferent to. I am willing to accommodate whatever is most convenient for Senators. I just ask for their support of the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. Mr. President, as I understand the situation now, we are about to enter into an agreement that we will vote on this amendment on Monday morning; is that right?

Mr. BYRD. That is what I would like under the circumstances. I would rather have the vote today. But the vote on Monday morning is fine with me because that sees us moving this bill along. I would like to propose there not be a motion to table, and that we vote up or down on the amendment on Monday, and that immediately upon the disposition of that vote the Senate go to a vote on passage of the bill.

Mr. HARKIN. I had earlier today said I was going to move to table the amendment. I had then moved to table and withdrew it. But if the Senator from Colorado insists even if the motion to table fails, we go to a vote on that, on the final disposition——

Mr. ARMSTRONG. Mr. President, if the leader will yield to me, I do not insist on a separate vote. I would be perfectly happy if the Senator prefers to table, to have the issue settled on tabling; everyone will understand that the motion to table is tantamount to a vote on the underlying issue and that is fine with me, or it is fine to have an up or down vote.

If I understand the leader's proposal, it is that we come in on Monday morning, and after the usual preliminary proceedings, that we would then proceed immediately to a vote on this, then a vote on final passage of the bill, that other amendments would not be in order, we wrap this up, and move on to the next item on the schedule.

Mr. HARKIN. I thank the Senator for his comity there. That is nice of him to do so. I appreciate that very much. We will just have a motion to table on Monday morning.

Mr. ARMSTRONG. That would be fine. Does the leader's consent request provide any time at all for debate on Monday?

Mr. BYRD. I have not made any request yet. I was hoping we would just have a vote up or down on the amendment. I am satisfied now that the problem of precedent has gone away temporarily.

Mr. ARMSTRONG. Would the leader be disposed to say have 5 minutes on a side prior to the vote just to kind of get everybody tuned up at the last minute?

Mr. BYRD. That might not be hard to arrange. I have deeper questions than that one right now if the Senator will allow me. The Senator has the floor.

Mr. ARMSTRONG. I thought the leader had the floor.

Mr. BYRD. The Senator may have the floor if he wishes.

The PRESIDING OFFICER. The Senator from Iowa has the floor.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that at the hour of 10:30 on Monday morning, the Senate proceed to a vote on the amendment by Mr. ARMSTRONG.

I ask unanimous consent that upon the disposition of that vote, the Senate proceed immediately to vote on the bill, without further debate or intervening action.

The PRESIDING OFFICER. Is there objection?

Mr. EXON. Mr. President, reserving the right to object, I inquire as to why we are putting off, until Monday morning, the vote we have been talking about for about 2½ hours. Is there some reason, secret or otherwise, that all of us cannot know about the decision arrived at?

I say this because there were widespread complaints that I heard from some Members of the Senate from the West who cannot get on an airplane and be in the Nation's Capital in an hour and a half. It is not quite as bad from Nebraska—it is about 4 hours; from some places 7 or 8 hours.

There has been previous objections to early Monday morning votes, so far as disrupting schedules are concerned, because Senators from the West have to leave on Sunday.

There may be some good reason for having this vote at 10:30 Monday rather than 4:30 on Friday, but I would like to know the answer to that question, if I may ask it.

Mr. BYRD. The Senator has asked a reasonable question; he is entitled to an answer.

I would like to have a vote this afternoon. I would like to finish action on the bill this afternoon. The responsibility on this Senator from West Virginia to move the program along in the Senate is probably a heavier responsibility than that of any other Senator, and I do the best I can to live up to that responsibility. But sometimes I realize that we have reached a point where we will not make any progress.

I realize that if we proceed in an effort to get a final vote on this bill today, we can be here until midnight or 2 o'clock in the morning and still will not vote on it. There is no way a vote on final passage can be forced except on cloture, and there has not been a cloture motion entered.

That having been said, if we have an agreement, if the Senate will order it in, which will allow the Senate to vote at 10:30 on Monday morning on the amendment, win or lose, the Senate then can proceed, without further debate or action of any kind, to vote on this bill.

Then we can proceed to the consideration of the legislation which was set up which deals with the establishment of a Veterans' Administration department. We would have this matter out of the way. It is impossible to reach a vote this afternoon.

I have toiled in the vineyard here now for 2 or 3 hours, as have some others, and there are Senators who are determined that there will not be a vote this afternoon, and there is no way in the world I can force it.

Mr. EXON. I appreciate the explanation. I am not sure the explanation answers my question.

If we cannot get final passage, which I know the leader wants to do—and that is why many of us stayed around here, without abandoning ship, to try to accommodate the leader and his desires—if we cannot get final passage today, for the reasons you have stated, and you know far more about that than does the Senator from Nebraska, why can we not vote on a tabling motion or something like that this

afternoon? That would not take any more time, would it?

My question is, Is there some reason we are putting this vote over until Monday?

Mr. BYRD. Yes, there is a reason for that.

I have to look beyond today, and I have to look beyond Monday, and I have to look beyond next week. We can have this vote on a tabling motion today—maybe. Let us say we proceed to a vote on a motion to table. Senators can put in a quorum call, and we might not have a difficult time getting a quorum and we might. We might get the Sergeant at Arms to get Senators in. Then, where are we, having done all that, when within my grasp here I have an agreement that will see us vote on this amendment without a tabling motion and vote on final passage on Monday morning.

Mr. EXON. Wait a minute.

We will go to final passage Monday morning, is that the agreement?

Mr. BYRD. Yes.

Mr. EXON. By what time?

Mr. BYRD. Immediately following the 10:30 vote on the amendment.

Let me say there is no Senator more diligent in staying around here in the afternoon and evening than the Senator from Nebraska [Mr. EXON]. He has stayed here this afternoon recognizing that there may be a rollcall vote and I appreciate that.

I hope I have answered.

There is absolutely nothing to be gained this afternoon by hoping to have a rollcall vote on the motion to table.

Mr. EXON. It seems to me this matter has been debated and debated and we are about ready to vote on it. Are there other amendments going to take a lot of time?

Mr. BYRD. There are not if I can get the agreement.

Mr. EXON. Then the question comes back to the situation that the Senator from Nebraska earlier expected. There are some people who do not want any more votes this afternoon; is that correct?

Mr. BYRD. The Senator is right.

Mr. EXON. I would just say that on behalf of my colleague from Nebraska and this Senator, I would advise the Senate that on Monday the 25th of July, two Senators from Nebraska have a very important conference scheduled. It is not campaigning. It is official business in Omaha on Monday. And I would hope that since consideration is obviously given to some Senators who are not here now that if my colleague and I from Nebraska ask that we not miss votes because we have to be elsewhere on official business as I assume that my colleagues who are not here to vote now are away on official business, that maybe some consideration could be given to us on Monday, the 25th. I am not making an early request now, but I could not pass up the opportunity to make a point.

Mr. BYRD. Mr. President, I am not responding to any Senator's request that there not be any rollcall vote this afternoon. No Senator has requested that. But I have been apprised of the fact that there are Senators, I am told, who will be willing to stand on the floor and expound at length—we have had too much of that already—expound at length to keep the Senate from having a vote.

Mr. EXON. I assumed that was the situation and I know that the majority leader gets placed in a position that he cannot do anything else. Maybe on Monday, the 25th, the two Senators from Nebraska can get someone to stand on the floor and expound and expound and expound to protect us because I would simply say that turn about is fair play.

I have no objection and I recognize the position that the majority leader is in. I just wanted to make a point.

Mr. BYRD. Mr. President, I do not want to carry on the debate, but may I say that the Senator from Nebraska has never before—and I think what he said was to make a point, but somewhat facetiously stated—I am sure he has never made a request to this Senator that if the Senator from Nebraska is absent——

Mr. EXON. I never have.

Mr. BYRD. No, he never has—if he is absent I must not let any votes occur. He has never made that request.

If he were to make it I could not give him that assurance.

Nobody has made that request of me today.

I just recognize the opportunity here to get an order entered that will see the Senate resolve this question and then go on to the adoption of the bill on Monday morning. I think that is about the best we can hope for.

Mr. EXON. I will be here. I thank the Senator.

Mr. BYRD. I thank the Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Wyoming.

Mr. SIMPSON. Mr. President, if I might ask the majority leader, he mentioned it, but did it include in the order that there will be no intervening amendments or motions? The majority leader spoke on that, but I do not believe it was part of the formal request, that there be no intervening amendments or motions in connection with that vote and the procedure he outlined in the unanimous-consent request.

Mr. BYRD. Very well. I will be happy to state the request again.

The PRESIDING OFFICER. It is the Chair's understanding that there was a standing order before the unanimous consent request of the majority leader which limited the debate on this subject matter to the pending amendment and no other amendments to be offered. The Chair stands corrected. Amendments could be filed to the pending amendment only.

Mr. ARMSTRONG. I beg the Chair's pardon. I do not think that was our intention.

ORDERS FOR MONDAY, JULY 11, 1988

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 10 o'clock a.m. on Monday next; that following the recognition of the two leaders there be a period for morning business to extend until the hour of 10:30 a.m.; that Senators may speak during this period for not to exceed 5 minutes each, that at 10:30 a.m. the Senate resume consideration of the D.C. appropriation bill; that there be 10 minutes for debate on the amendment by Mr. ARMSTRONG to be equally divided and controlled in accordance with the usual form; that the vote then proceed; that immediately upon the disposition of that vote the Senate without any intervening motion, debate, action of any kind, amendments of any nature, proceed to vote immediately upon the passage of the bill; that upon the disposition of the bill the Senate then proceed, as under the order previously entered, to consideration of S. 11 and upon the disposition of S. 11 the Senate proceed to the consideration of S. 533 which is a bill to establish the Veterans' Administration as an executive department, that matter pertaining to those two bills having already been cntered as an order; and that anent any votes on motions to reconsider with respect to the amendment by Mr. ARMSTRONG and the vote on the D.C. appropriation bill be without any time for debate on such motion.

The PRESIDING OFFICER. Is there objection to the request of the majority leader?

Without objection, it is so ordered.

Mr. BYRD. Mr. President, there will be no more rollcall votes today.

Mr. President, I suggest the absence of a quorum.

Mr. SIMPSON. Mr. President, if I might ask the majority leader to withdraw that request.

Mr. BYRD. Yes.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BYRD. Mr. President, will the distinguished Senator yield to me?

Mr. SIMPSON. Yes.

Mr. BYRD. I thought I understood Senators to say that they wanted no other amendments other than the vote on the amendment by Mr. ARMSTRONG; that all other amendments

would be precluded. Now am I being advised that Senators would want second-degree amendments?

The PRESIDING OFFICER. The Chair would advise the majority leader that, under the standing order, there could be an amendment that has not been precluded.

Mr. BYRD. But I thought that this order, if it is entered, in effect, vitiates the old order. When I said no further amendments—this is an entirely new order that is being entered and I asked that there be no other amendments. So does this order not dispose of the old order?

The PRESIDING OFFICER. If that is the majority leader's unanimous-consent request, without objection, that will be the order.

Mr. BYRD. Let me ask the Chair and let me get a little education of my own on this matter.

Does not this new order, setting a time, a vote on the amendment to occur at 10:40, and that no other amendment be in order, no other motions, no other intervening action of any kind, and that the Senate go immediately to the vote on final passage, does that not supersede any previous order?

The PRESIDING OFFICER. The Chair is advised by the Parliamentarian that the majority leader's knowledge of the rules is correct and his statement is accurate.

Mr. BYRD. I thank the Chair. I just wanted to be sure. If I am not correct, I want to start thinking in new terms in the future.

Mr. SIMPSON. Mr. President, I would have thought that that would have been correct, just offhand.

THE MANTLE OF LEADER

Mr. President, I want to thank the majority leader very much for his accommodation and courtesy as we resolved, this, where he accommodated Members on both sides of the aisle in an extraordinary fashion, as he always does. And how vexatious it is to wear the mantle of leader and do the work of the Senate, especially where we had a long night on Thursday and a long day on Friday. Some of us, and I include myself, are less than judicious in the statements made sometimes to our colleagues as we go through the frustration of something that we know is attainable in the way of a vote.

I wish to thank very much the Senator from Colorado, who was steady on his course, and the Senator from Iowa, who remained steady on his course. They are very formidable gentlemen in their debate and in their procedures in the Senate. They have agreed and assisted you, as majority leader, and this side of the aisle to reach an accommodation where our colleagues can leave the Chamber and go to their home districts and return Monday.

But it is the comity and general courtesy under true stress that makes the majority leader superb at his craft. Someday I will learn that degree of patience. I have not, as I sometimes get a little rambunctious in my activities. But the essence of him is patience, patience, patience.

I say again that no one protects Members on both sides of the aisle more than the majority leader. Anyone who would even allude to the fact that he does not surely does not know the extraordinary degree to which he goes to accommodate Members on both sides of the aisle and who makes it run.

All of us knew—and I go back to that central accommodation that was made—that we have 1 week off to go to our homes and our districts to do the things we pleaded to do in the week where you could do the Rotary and the Legion and things you need to do on Tuesdays and Wednesdays. But we know we were going to be in business on Mondays and Fridays. And I cannot emphasize enough that I agree with you totally on that effort and that we should all be aware of that. I personally have missed votes knowing of that.

I conclude by thanking the Senator from Connecticut, even though he was not here on the floor, on his accommodation to the leadership by his communication which enabled us to move forward. I appreciate Senator WEICKER's assistance. I thank the majority leader for his extraordinary accommodation which is most extraordinary to watch.

Mr. ARMSTRONG. Mr. President, will the acting Republican leader yield to me for a moment?

Mr. SIMPSON. I yield to the Senator.

Mr. ARMSTRONG. Mr. President, once in a while in this Chamber, you get to a point where somebody stands up and says exactly what you wanted to say. And let me say to my friend from Wyoming that, if I were as eloquent as he, that is exactly what I would have said on this occasion.

And so may I just adopt by reference everything that he has said and add my own word of appreciation to the leader for getting us out of the snarl, as he always does and is his duty and responsibility to do, and to thank him for doing it once again, for getting us off the hook and for sending us all home for the weekend at a good hour and in good spirits. I do thank him very much.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Colorado for his gracious statement. I thank the distinguished assistant Republican leader. His mention of the Senator from Connecticut [Mr. WEICKER], I think calls for a brief observation on my part.

I think that part of our uncertainties today, certainly the uncertainties that were in the mind of the manager of the bill, Mr. HARKIN, involved Mr. WEICKER. It may have been that there was an understanding between the two or a feeling that there may have been some understanding. I think that Mr. HARKIN was trying to protect Mr. WEICKER or what he thought Mr. WEICKER's position might be. The distinguished assistant Republican leader was able to clarify all of that by calling Mr. WEICKER. That enabled us, as much as anything, to get out of the hassle we had gotten ourselves into.

So I thank the assistant Republican leader and I thank all Senators. I thank Mr. HARKIN. I thank Mr. WEICKER, also, because he played a role here today, I am sure, in his message to Mr. SIMPSON.

So I am grateful that the Senate has been able to work its way out of a difficult situation and that we are going to see final action on the bill early next week and get on with the Department of Veterans' Affairs and then other appropriation bills.

I close by thanking the Republican leader, Mr. DOLE, for the cooperation he has given to me over the past several days in lining up appropriation bills for action. He has been an immense help to me and I think it furthers the prospect of our being able to complete action on these appropriation bills, hopefully, by August 1.

I look forward to further cooperation with the Republican leader in that regard.

Mr. SIMPSON. Mr. President, would the majority leader yield?

Mr. BYRD. Oh, yes.

Mr. SIMPSON. Mr. President, let me say that I know that Senator DOLE is appreciative of those remarks because he, too, feels that he has tried diligently to cooperate with you as majority leader to move the agenda and I think we are doing a superb job in a very fine, bipartisan manner. I know that he would be appreciative.

Let me say another word about Senator HARKIN. As I visited with him, I do think you are very correct. He felt that Senator WEICKER had given him information that was steady and strong. And it was. We both know Senator WEICKER. And yet it is an important example of the necessity to do business amongst ourselves as principals. And I enjoy that.

I think it was good. Maybe we could have resovled that last night. Maybe not. But the point is we are elected Senators and we should try to do our business, occasionally, with ourselves and among ourselves and between ourselves. Even though the staff is critically important, it is also a critical burden upon us in many situations.

I say that without any gasping from the back of the Chamber which will accompany such a remark but it is very true. You cannot live with them and you cannot live without them.

Mr. BYRD. Is the Senator talking about the staff or about women?

[Laughter.]

Mr. SIMPSON. No, about our colleagues. And to do business with our fellows is still what the Senate should be about and must be about if we are to do our work. That is why I have a personal feeling of great respect for the majority leader.

When I have business to do I do it with you personally—without addressing him in the first person in this debate or these remarks. That is what we must do.

I will learn to do that more. I want to do that with Senator HARKIN. And, certainly I have said some rather pungent things—he and I have both shared those things together. We will learn to work together. I am going to make a special effort to try to do that.

Mr. BYRD. Mr. President, I am sure Mr. HARKIN will go the utmost distance and make the greatest effort to cooperate with the distinguished assistant Republican leader, and I am sure that each of them respects the other.

ENROLLED BILL PRESENTED

The Secretary of the Senate announced that on today, July 8, 1988, he had presented to the President of the United States the following enrolled bill:

S. 623. An act to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1987, 1988, 1989, and 1990, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3501. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a financial report on the Federal Savings and Loan Corporation for the fiscal years 1986 and 1987; to the Committee on Banking, Housing and Urban Affairs.

EC-3502. A communication from the Chairman of the Securities and Exchange Commission, transmitting legislative provisions prepared by the Commission in response to concerns raised by the October 1987 market break; to the Committee on Banking, Housing and Urban Affairs.

EC-3503. A communication from the Secretary of Transportation transmitting a draft of proposed legislation to amend the Federal Aviation Act of 1958 to strengthen aviation security programs; to the Committee on Commerce, Science, and Transportation.

EC-3504. A communication from the Secretary of Transportation transmitting requests for renewal of Montreal Protocols 3 and 4; to the Committee on Commerce, Science, and Transportation.

EC-3505. A communication from the Administrator of the Federal Aviation Administration, transmitting, pursuant to law, the semiannual report on the effectiveness of Civil Aviation Security Program for the period July 1, 1987 through December 31, 1987; to the Committee on Commerce, Science, and Transportation.

EC-3506. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayments of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3507. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayments of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3508. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayments of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3509. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Services, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayments of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3510. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Services, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayments of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3511. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Services, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayments of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3512. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Services, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayments of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3513. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Services, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayments of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3514. A communication from the Secretary of Energy, transmitting, pursuant to law, the first annual report on the Clean Coal Technology Demonstration Program; to the Committee on Energy and Natural Resources.

EC-3515. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, an interim report on studies being conducted on issues related to volume and intensity of physicians' services; to the Committee on Finance.

EC-3516. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a report on certain employee benefits not subject to federal income tax; to the Committee on Finance.

EC-3517. A communication from the President of the United States, transmitting, pursuant to law, the designation of Anne E. Brunsdale as Vice Chairman of the U.S. International Trade Commission; to the Committee on Finance.

EC-3518. A communication from the Secretary of Labor, transmitting, pursuant to law, a report on the expenditure and need for worker adjustment assistance training funds under the Trade Act for the fiscal year 1988; to the Committee on Finance.

EC-3519. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report on progress made in implementing the requirement to request the UN to expand the mandate of UNIFIL to protect Tyre; to the Committee on Foreign Relations.

EC-3520. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report on the use of a foreign mission in a manner incompatible with its status as a foreign mission; to the Committee on Foreign Relations.

EC-3521. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, notification that the Export-Import Bank has lifted restrictions against Benin, Congo, Guyana, and Suriname; to the Committee on Foreign Relations.

EC-3522. A communication from the Chairman of the Securities and Exchange Commission, transmitting, pursuant to law, the annual report of the Commission on the Government under the Sunshine Act for the calendar year 1987; to the Committee on Governmental affairs.

EC-3523. A communication from the Chairman of the Federal Energy Regulatory Commission, transmitting, pursuant to law, the annual report of the Commission on the Government under the Sunshine Act; to the Committee on Governmental Affairs.

EC-3524. A communication from the Auditor of the District of Columbia, transmitting, pursuant to law, a report entitled "Contracts Between KOBA Associates, Inc. and the Department of Human Resources"; to the Committee on Governmental Affairs.

EC-3525. A communication from the Auditor of the District of Columbia, transmitting, pursuant to law, a report entitled "Contracts Between Associates for Renewal in Education, Inc. and the Department of Human Services"; to the Committee on Governmental Affairs.

EC-3526. A communication from the Under Secretary of Defense transmitting comments from the Texas Air Control Board and the Environmental Protection Agency concerning the Intermediate Range Nuclear Forces Treaty; to the Committee on Governmental Affairs.

EC-3527. A communication from the Administrator of the U.S. Environmental Protection Agency, transmitting, pursuant to law, a semiannual report of the activities of the Inspector General, Environmental Protection Agency for the period from October 1, 1987 to March 31, 1988; to the Committee on Governmental Affairs.

EC-3528. A communication from the Chairman of the U.S. Merit Systems Protection Board, transmitting, pursuant to law, a report entitled "Sexual Harassment in the

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Federal Government"; to the Committee on Governmental Affairs.

EC-3529. A communication from the Benefit and Risk Manager, Fourth District Farm Institutions, transmitting, pursuant to law, the annual report for the Farm Credit Institutions in the fourth district amended retirement plan; to the Committee on Governmental Affairs.

EC-3530. A communication from the Inspector General, Department of Labor, transmitting, pursuant to law, notice of a computer match involving a sample of Job Training Partnership Act participants and Department of Education Pell grants; to the Committee on Governmental Affairs.

EC-3531. A communication from the Secretary of the United States of America Postal Rate Commission, transmitting, pursuant to law, notice of a proposal to exclude total market coverage publications and "plus" publications from the second class and order designating officer of the Commission and order officer of the Commission and fixing procedural dates; to the Committee on Governmental Affairs.

EC-3532. A communication from the Solicitor of the United States Commission on Civil Rights, transmitting, pursuant to law, the annual report of the Commission under the Government in the Sunshine Act for calendar year 1987; to the Committee on Governmental Affairs.

EC-3533. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "University of the District of Columbia President's Discretionary Fund FY 1987 Annual Report"; to the Committee on Governmental Affairs.

EC-3534. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "FY 1988 Mid Year Revenue Analysis"; to the Committee on Governmental Affairs.

EC-3535. A communication from the Acting Administrator of General Services, transmitting a draft of proposed legislation to amend section 603(a) of the Federal Property and Administrative Services Act of 1949, as amended, 64 Stat. 590, 40 U.S.C. 475(a), by adding a provision authorizing the expenditure of moneys for official reception and representation expenses; to the Committee on Governmental Affairs.

EC-3536. A communication from the special counsel to the Merit Systems Protection Board, transmitting, pursuant to law, a report on the Directors investigation into allegations of violations of regulations, mismanagement, gross waste of funds, abuse of authority, and creating a substantial danger to public safety by officials of the U.S. Penitentiary, Atlanta, GA, in the Cuban detainee disturbances of November 1987; to the Committee on Governmental Affairs.

EC-3537. A communication from the Secretary of Education, transmitting, pursuant to law, the annual report of the Helen Keller National Center for Deaf-Blind Youths and Adults [HKNC] for the 1987 program year; to the Committee on Labor and Human Resources.

EC-3538. A communication from the Secretary of Education, transmitting, pursuant to law, a report on the final regulations for the drug prevention programs in higher education; to the Committee on Labor and Human Resources.

EC-3539. A communication from the Secretary of Labor, transmitting a draft of proposed legislation entitled "At-Risk Youth Employment and Training Amendments of 1988"; to the Committee on Labor and Human Resources.

EC-3540. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on the status of health personnel in the United States; to the Committee on Labor and Human Resources.

EC-3541. A communication from the Secretary of Labor, transmitting, pursuant to law, a report on an experimental index of consumer prices reweighted to reflect expenditure patterns of older Americans; to the Committee on Labor and Human Resources.

EC-3542. A communication from the Secretary of Education, transmitting, pursuant to law, a report on the final regulations for the Secretary's procedures and criteria for recognition of accrediting agencies; to the Committee on Labor and Human Resources.

EC-3543. A communication from the Secretary of Education, transmitting, pursuant to law, a report on programs and activities assisted under the Women's Educational Equity Act [WEEA] in fiscal year 1987; to the Committee on Labor and Human Resources.

EC-3544. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a study of the national incidence and prevalence of child abuse and neglect; to the Committee on Labor and Human Resources.

EC-3545. A communication from the Comptroller General of the United States, transmitting, pursuant to law, notification of the appointment of Mr. John G. Ireland, to the Commission on Railroad Retirement Reform; to the Committee on Labor and Human Resources.

EC-3546. A communication from the Secretary of Education, transmitting, pursuant to law, a report on final regulations for the National Institute on Disability and Rehabilitation Research—Research Training and Career Development Program; to the Committee on Labor and Human Resources.

EC-3547. A communication from the Secretary of Transportation, transmitting drafts of two proposed bills relative to amending title I of the Railway Labor Act with regard to secondary activity in the railroad industry; and to amend title II of the Railway Labor Act with regard to secondary activity in the airline industry; to the Committee on Labor and Human Resources.

EC-3548. A communication from the Secretary of Education, transmitting, pursuant to law, a report on final regulations for the National Institute on Disability and Rehabilitation Research—Field-Initiated Research; to the Committee on Labor and Human Resources.

EC-3549. A communication from the Secretary of Education, transmitting, pursuant to law, the Department of Education's 14th edition of the annual statistical report entitled, "The Condition of Education"; to the Committee on Labor and Human Resources.

EC-3550. A communication from the Librarian of Congress, transmitting, pursuant to law, the annual report on activities of the Library of Congress, including the Copyright Office, for fiscal year 1987; to the Committee on Rules and Administration.

EC-3551. A communication from the Administrator of Veterans Affairs, transmitting a draft of proposed legislation to amend title 38, United States Code, to convert nonphysician directors appointed under section 4103(a)(8), to Senior Executive Service career appointees; to the Committee on Veterans' Affairs.

EC-3552. A communication from the Chairman, Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the 74th annual report of the Board of Governors; to the Committee on Banking, Housing, and Urban Affairs.

EC-3553. A communication from the Chairman, Federal Deposit Insurance Corporation, transmitting, pursuant to law, the FDIC's annual report for the calendar year 1987; to the Committee on Banking, Housing, and Urban Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 1418: A bill to direct the Secretary of the department in which the United States Coast Guard is operating to cause the vessel M.V. *Polar Ice* to be documented as a vessel of the United States so as to be entitled to engage in the coastwise trade (Rept. No. 100-419).

S. 2300: A bill to issue a fisheries license for the operation of the vessel M.V. *Ocean Cyclone* (Rept. No. 100-420).

S. 2331: A bill to issue a fisheries license for the operation of the vessel M.V. *Ocean Tempest* (Rept. No. 100-421).

S. 2417: A bill to authorize a certificate of documentation for certain vessels (Rept. No. 100-422).

S. 2493: A bill to authorize a certificate of documentation for the vessel *Compass Rose III* (Rept. No. 100-423).

By Mr. GLENN, from the Committee on Governmental Affairs, with amendments:

S. 2215: A bill to amend the Office of Federal Procurement Policy Act to authorize appropriations for an additional 4 years, and for other purposes (Rept. No. 100-424).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DIXON:

S. 2621. A bill to amend title 10, United States Code, to expand the responsibilities of the Under Secretary of Defense for Acquisition for Department of Defense procurements, and to prescribe unlawful conduct relating to Department of Defense procurements; to the Committee on Armed Services.

By Mr. BOSCHWITZ:

S. 2622. A bill to provide for the implementation of private sector funding for certain refugees; to the Committee on the Judiciary.

By Mr. BOSCHWITZ (for himself, Mr. BAUCUS, Mr. BURDICK, Mr. CONRAD, Mr. KARNES, Mr. MELCHER, Mr. PRESSLER, Mr. NICKLES, Mr. WALLOP, Mr. SIMON, Mr. DASCHLE, Mr. DURENBERGER, Mr. QUAYLE, Mr. COCHRAN, Mr. BOREN, and Mr. GRASSLEY):

S. 2623. A bill to amend the Small Business Act to clarify the Administrator's authority to make economic injury disaster loans in case of drought; to the Committee on Small Business.

By Mr. BOSCHWITZ:

S. 2624. A bill to amend the Small Business Act to provide simplification of forms to encourage certified and preferred lenders to provide loans of $50,000 or less, and for

other purposes; to the Committee on Small Business.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DIXON:

S. 2621. A bill to amend title 10, United States Code, to expand the responsibilities of the Under Secretary of Defense for Acquisition for Department of Defense procurements, and to prescribe unlawful conduct relating to Department of Defense procurements; to the Committee on Armed Services.

DEPARTMENT OF DEFENSE PROCUREMENT IMPROVEMENTS ACT

Mr. DIXON. Mr. President, as a member of the Armed Services Committee, I am deeply shocked and concerned with the revelations of the latest procurement scandal at the Department of Defense. The extent of this scandal and the potential taint on the award of major defense weapons system contracts has damaged the integrity of the defense procurement system. This scandal follows on the heels of disclosures of $3,500/$100 coffee urns, defective bolts throughout the defense inventory, and report after report of shoddy workmanship and massive cost overruns. The sad recent history of the defense acquisition system cannot be explained away as the mistakes or excesses of a few individuals or greedy contractors. It is clearly evident that there is a serious underlying problem with the management of the defense procurement system that must be remedied.

I have introduced several pieces of legislation in recent years that have sought to redress the deficiencies in the acquisition practices of the Defense Department. I introduced the legislation that created the Office of the Under Secretary of Defense for Acquisition. At that time, I had to engage in battle with the Secretary of Defense and the Service Secretaries. The defense establishment continues to argue for "business as usual" practices in the procurement process. The legal and moral breakdown in the system gives lie to the claims that the system works as is. I wanted the Under Secretary to be responsible for supervising the entire defense acquisition system, but the Pentagon resisted this essential reform. The Congress nonetheless authorized direct and explicit responsibilities and duties for this position, but the Defense Department continues to be reluctant in instituting necessary change.

It is time to again push for procurement reform, as I have in the past. We must centralize authority and responsibility for the procurement process in a single office. I am introducing legislation today to strengthen the role of the Under Secretary of Defense for Acquisition and make him a true procurement and acquisition czar. Furthermore, we must reestablish integrity in the procurement system. The worst aspects of the buddy system must be removed from the acquisition process. My legislation will establish parameters for contractors, consultants, and Government officals involved in Government contracting.

We cannot totally legislate away greed and corruption. There will always be some individuals who will put personal gain above all else. But we must do everything possible to correct the inherent inefficiences of the current system and to reduce the potential for abuse. The rule of law must prevail in defense procurement as it does in every sphere of American society. The cause of national security should not be a shield for incompetence, mismanagement, corruption, and cronyism.

Mr. President, I ask unanimous consent that my bill, along with a summary, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2621

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the "Department of Defense Procurement Improvements Act of 1988".

SEC. 2. UNDER SECRETARY OF DEFENSE FOR ACQUISITION

(a) RESPONSIBILITIES.—(1) Subsection (b) of section 133 of title 10, United States Code, is amended to read as follows:

"(b)(1) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition shall be responsible for—

"(A) the centralized procurement of all property and services for the Department of Defense;

"(B) the establishment and implementation of procurement policies for the Department and the approval of exceptions from the application of such policies in the case of any procurement;

"(C) all contract administration functions of the Department of Defense, including all contract audit functions of the Department; and

"(D) the supervision, direction, and control of all competition advocates in the Department of Defense.

"(2) The Under Secretary may delegate his authority with respect to the procurement of any particular type or class of property or service to the Senior Acquisition Executive of a military department if the Under Secretary determines that the delegation of such authority will result in savings to the United States or is necessary to provide the property or service to the military department in a timely and efficient manner.".

(2) Section 133 of such title is further amended—

(A) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (g), respectively;

(B) by inserting after subsection (b), the following new subsection (c):

"(c)(1) All functions of the Department of Defense relating to the procurement of property and services shall come under the Office of the Under Secretary of Defense for Acquisition.

"(2) All functions of the Defense Acquisition Regulation Council and of the Defense Logistics Agency shall come under the Office of the Under Secretary of Defense for Acquisition.

"(3) All functions of the Office of Small and Disadvantaged Business Utilization for the Department of Defense (established under section 15(k) of the Small Business Act (15 U.S.C. 644(k)) shall come under the Office of the Under Secretary of Defense for Acquisition."; and

(C) by inserting after subsection (e), as redesignated by clause (A), the following:

"(f) The Secretary of Defense, in consultation with the Under Secretary, shall appoint the Senior Acquisition Executive of each military department by and with the advice and consent of the Senate. Each Senior Acquisition Executive shall report directly to the Under Secretary.".

(3) Subsection (e) of such section, as redesignated by paragraph (2), is amended to read as follows:

"(e)(1) In carrying out responsibilities relating to contract audit functions of the Department of Defense, the Under Secretary shall consult with the Inspector General of the Department of Defense.

"(2) Nothing in this subsection shall affect the authority of the Inspector General of the Department of Defense to establish audit policy for the Department of Defense under the Inspector General Act of 1978 and otherwise to carry out the functions of the Inspector General under that Act.".

(4)(A) Chapter 137 of such title is further amended by adding at the end thereof the following new section:

"§ 2330. Contracts for full-scale development and for production

"A contract for the full-scale development of a major system or for the procurement of a major system may not be entered into unless the Under Secretary of Defense for Acquisition has reviewed and approved the contract. In reviewing any proposed contract for procurement of a major system, the Under Secretary shall evaluate the plans and specifications for the system, determine the necessity for production, consider the commonality of parts and components of the system, and consider the complexity and practicality of the system.".

(B) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"2330. Contracts for full-scale development and for production.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Section 138(d)(1) of title 10, United States Code, is amended by striking out "Secretary of Defense" in the first sentence and inserting in lieu thereof "Under Secretary of Defense for Acquisition".

(2)(A) Section 2302 of title 10, United States Code, is amended by striking out "Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force" in paragraph (1) and inserting in lieu thereof "Under Secretary of Defense for Acquisition".

(B) Section 2303(a) of such title is amended by striking out clauses (2), (3), and (4) and by redesignating clauses (5) and (6) as clauses (2) and (3), respectively.

(3) Section 2318 of title 10, United States Code, is amended by striking out subsection (c) and inserting in lieu thereof the following:

"(c) All advocates for competition in the Department of Defense shall be under the supervision, direction, and control of the Under Secretary of Defense for Acquisition.

"(d) Each advocate for competition of a military department or a Defense Agency shall transmit to the Under Secretary of Defense for Acquisition a report describing the activities of the advocate during the preceding year. Such report shall be transmitted at such time and contain such information as the Under Secretary shall prescribe.".

(4) Chapter 145 of title 10, United States Code, is amended—

(A) in section 2451—

(i) by striking out "Secretary of Defense" in subsection (a) and inserting in lieu thereof "Under Secretary of Defense for Acquisition, subject to the authority, direction, and control of the Secretary of Defense,";

(ii) by striking out "Secretary" each place it appears in subsection (b) and inserting in lieu thereof "Under Secretary"; and

(iii) by striking out "Secretary" in subsection (c) and inserting in lieu thereof "Under Secretary";

(B) in section 2452, by striking out "Secretary of Defense" in the matter preceding clause (1) and inserting in lieu thereof "Under Secretary of Defense for Acquisition";

(C) in section 2453—

(i) by striking out "Secretary of Defense" in the first sentence and inserting in lieu thereof "Under Secretary of Defense for Acquisition"; and

(ii) by striking out "Secretary" in the second sentence and inserting in lieu thereof "Under Secretary";

(D) in section 2454—

(i) by striking out the period at the end of the second sentence and inserting in lieu thereof ", subject to such regulations as the Under Secretary of Defense for Acquisition may prescribe."; and

(ii) by striking out "Secretary" in the third sentence and inserting in lieu thereof "Under Secretary"; and

(E) in section 2455—

(i) by striking out "Secretary of Defense" in subsection (a) and inserting in lieu thereof "Under Secretary of Defense for Acquisition";

(ii) by striking out "Secretary" in subsection (a)(4) and inserting in lieu thereof "Under Secretary"; and

(iii) by striking out "Secretary" in subsection (b) and inserting in lieu thereof "Under Secretary".

SEC. 3. UNLAWFUL PROCUREMENT CONDUCT

(a) IN GENERAL.—(1) Chapter 141 of title 10, United States Code, is amended by inserting after section 2397c the following new section:

"§ 2397d. Unlawful procurement conduct

"(a) During the conduct of any Department of Defense procurement of property or services, it shall be unlawful—

"(1) for any officer, employee, or representative of any competing contractor or any consultant retained by that contractor knowingly to make any offer or promise of future employment or business opportunity to, or to knowingly engage in any discussion of future employment or business opportunity with, any procurement official or employee of the Department of Defense;

"(2) for any officer, employee, or representative of any competing contractor or any consultant retained by that contractor knowingly to offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any procurement official or employee of the Department of Defense;

"(3) for any procurement official or employee of the Department of Defense knowingly to ask, demand, exact, solicit, seek, accept, receive, or agree to receive, directly or indirectly, any money, gratuity, or other thing of value (including an offer of future employment) from any officer, employee, or representative of any competing contractor or representative of any competing contractor or any consultant retained by that contractor for such procurement;

"(4) for any procurement official or employee of the Department of Defense knowingly to disclose to any officer, employee, or any consultant retained by that contractor for such procurement, prior to the award of a contract and with regard to the bids or proposals of other competing contractors—

"(A) any confidential or proprietary data of other competing contractors for such procurement; or

"(B) any other information the disclosure of which to the competing contractor would give that contractor an unfair competitive advantage with respect to that procurement, or would otherwise undermine the integrity of the procurement process of the Department of Defense; or

"(5) for any officer, employee, or representative of any competing contactor or any consultant retained by that contractor knowingly to solicit or obtain corruptly from any procurement official or employee of the Department of Defense any information described in clause (A) or (B) of paragraph (4).

"(b)(1) The Department of Defense may not award any contract for the procurement of any property or services to any competing contractor unless—

"(A) the officer, employee, or representative of the competing contractor who signs the bid or proposal certifies in writing to the contracting officer for such procurement that—

"(i) the certifying officer, employee, or representative does not know or have reason to know of any misconduct that is unlawful under subsection (a) or of any violation of the requirements of the regulations issued to carry out this section; and

"(ii) each officer, employee, and representative of such contractor who has participated personally and substantially in the conduct of the procurement has signed an agreement to comply with this section; and

"(B) each procurement official and employee of the Department of Defense who has participated personally and substantially in the conduct of the procurement certifies in writing to the contracting officer that neither the competing contractor nor the official or employee, as applicable, has to the knowledge of that procurement official or employee, engaged in misconduct that is unlawful under subsection (a) or has violated the requirements or the regulations issued to carry out this section.

"(2) For the purposes of enforcing the requirements of paragraph (1), the contracting officer responsible for the conduct of a procurement shall maintain, as part of the procurement file—

"(A) all certifications required by this subsection; and

"(B) a permanent record (including dates of involvement in the procurement) of all Department of Defense employees serving as procurement officials or employees with respect to such procurement.

"(3) Any person making a certification required by paragraph (1) shall be notified of the applicability of section 1001 of title 18 to false, fictitious, or fraudulent statements in such certification.

"(c) It shall be unlawful for any individual who, during the conduct of any Department of Defense procurement, was engaged as a procurement official or employee of the Department in the conduct of such procurement—

"(1) to participate in any manner, as an officer, employee, or agent of or a consultant to a competing contractor in any negotiations leading to the award, modification, or extension of a contract for such procurement; or

"(2) to participate personally and substantially in the performance of such contract,

during the two-year period beginning on the date such individual ceases to be a procurement official or employee of the Department of Defense.

"(d)(1) Any individual who is or was a contracting officer, and who is found, after notice and opportunity for a hearing in accordance with procedures prescribed by the regulations issued to carry out this section, to have engaged in misconduct that is unlawful under this section, shall be ineligible for any future service as a Federal Government contracting officer.

"(2)(A) If an officer, employee, or representative of a competing contractor engages in misconduct that is unlawful under this section—

"(i) the Secretary of Defense shall determine, after notice and a hearing, whether the contractor's right to proceed under the contract should be terminated; and

"(ii) the Secretary shall initiate a debarment proceeding in accordance with this paragraph and determine the present responsibility of the contractor with respect to awards of other Federal Government contracts.

"(B) A debarment proceeding subject to this paragraph shall be conducted by the Armed Services Board of Contract Appeals. The Board shall, based upon a preponderance of the evidence presented, resolve all issues of fact, determine whether a basis exists for debarment of the contractor, or of a subsidiary, division, affiliate, officer, or employee of the contractor, and issue a final decision in favor of or against debarment of the competing contractor, or any subsidiary, division, affiliate, officer, or employee of the contractor. Determinations and final decisions of the Board shall be final unless appealed to the United States Court of Appeals for the District of Columbia within 60 days after the receipt by the competing contractor of a copy of a final decision of the Board, in which case such determinations and decisions shall be final unless found by the court to be arbitrary and capricious.

"(C) Upon issuance of any final decision under this paragraph recommending debarment of a contractor (or subsidiary, division, affiliate, officer, or employee thereof), such contractor, subsidiary, division, affiliate, officer, or employee shall be ineligible for award of any contract and for participation in any future procurement for a period of up to five years. Upon issuance of any final decision recommending against debarment of the contractor and its subsidiaries, divisions, affiliates, officers, and employees, the contractor shall be compensated as provided by law or regulations.

"(e) In this section:

"(1) The term 'conduct', with respect to a procurement, means—

"(A) development, preparation, and issuance of the procurement solicitation;

"(B) evaluation of proposals;

"(C) selection of sources; and

"(D) conduct of negotiations for the award, modification, or extension of a contract.

"(2) The term 'competing contractor', with respect to any procurement (including any procurement using procedures other than competitive procedures) of property or services, means any entity that is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such procurement.

"(3) The term 'procurement official or employee', with respect to a procurement, includes any official or employee of the Department of Defense who has participated personally and substantially in the procurement, including all officers and employees responsible for reviewing or approving the procurement.

"(4) The term 'contracting officer' means any official or employee who is authorized to enter into, administer, or terminate contracts and make related determinations and findings.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2397c the following new item:

"2397d. Unlawful procurement conduct.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(1) shall take effect with respect to conduct on or after the date of enactment of this Act.

DEPARTMENT OF DEFENSE PROCUREMENT IMPROVEMENT ACT OF 1988

SUMMARY

Purpose of the legislation: To prevent abuses in the process of awarding contracts by the Department of Defense.

Establishing a centralized contracting authority in the Under Secretary of Defense for Acquisition, with extensive authority to review and approve individual major system contracts recommended for award by the individual Military Services under delegated authority; and

Specifying improper conduct for contractors, and their consultants, as well as Government procurement officials, relating to the award of contracts, and prescribes an array of strong administrative sanctions for enforcement of those standards.

Major provisions of the legislation: Centralizing procurement authority in the Under Secretary of Defense for Acquisition.

Under legislation sponsored by Senator Dixon in the 98th Congress, the Under Secretary of Defense for Acquisition (USDA) has the authority to establish the procurement policies and practices of the Department of Defense. However, responsibility for actual contracting to procure weapon systems, spare parts, other supplies, and services was left with the individual Military Services and the Defense Agencies, like the Defense Logistics Agency. The wrongdoing being revealed in the currently unfolding scandal points to improper activities that have corrupted the Congressional mandated competitive process for the award of individual contracts.

The bill would expand the authorities of the Under Secretary of Defense for Acquisition, moving the position back to being the complete "procurement czar envisioned by Congress, by:

Centralizing complete procurement authority in the Under Secretary of Defense for Acquisition.

Assigning the USDA control over the competition advocates in each of the Military Services and Defense agencies, who are statutorily charged with preserving and enhancing the competitiveness of Defense procurements.

Providing the USDA with greater control over the Senior Acquisition Executives for the Military Services, by requiring their confirmation by the Senate and giving the Under Secretary of Defense for Acquisition a role in their selection, requiring that they report to the USDA, limiting their acquisition authority to that delegated by the USDA.

Providing the USDA with the authority to review and approve each contract for the development or production of a major weapon system, thus providing a centralized review of those "big ticket" contracts that may be subject to abuse during the award process conducted by the buying commands of the Military Services.

Curbing unlawful procurement conduct

The bill would—specify a unlawful conduct the offer of future employment or business opportunity to any DoD procurement official or employee.

Offer or give, directly or indirectly, any gratuity or other thing of value to a DoD employee.

Prohibit a DoD employee from soliciting or receiving a gratuity or other thing of value (including an offer of future employment) from a competing contractor.

Prohibit a DoD procurement official from knowingly disclosing to a competing contractor any confidential or proprietary information, or any other information that would provide a competitive advantage.

Prohibit a contractor or its consultant from soliciting to corruptly obtain such buinsses confidential or proprietary information.

Prohibit the Department of Defense from awarding a contract unless the contractor certifies in writing that there has been no violation of standards of conduct as prescribed by the legislation or its implementing regulations.

Require employees of a competing contractor, and any of its consultants, who participated personally and substantally in the competition for a contract to sign an agreement that they have complied with the standards of conduct required by the legislation or its implementing regulations.

Require a similar certification from each DoD procurement official who participated in the award of the contract.

Make anyone filing a false certification subject to criminal sanctions under the United States Code.

Permit the termination of a contract found to have been awarded through unlawful conduct on the part of the contractor, its consultants, or government employees who were improperly influenced.

Closing the revolving door

The bill would—prohibit a DoD official who participated in any manner in the negotiations leading to the award of a contract from accepting employment with the winning contractor for two years after leaving government service.

Bar permanently a government employee from beng a contracting officer with any federal agency if found to have engaged in unlawful conduct.

Would make a contractor or its consultant found to have engaged in unlawful conduct subject to personal debarment from participation in future contracting activities.

By Mr. BOSCHWITZ (for himself, Mr. BAUCUS, Mr. BURDICK, Mr. CONRAD, Mr. KARNES, Mr. MELCHER, Mr. PRESSLER, Mr. NICKLES, Mr. WALLOP, Mr. SIMON, Mr. DASCHLE, Mr. DURENBERGER, Mr. QUAYLE, Mr. COCHRAN, Mr. BOREN, and Mr. GRASSLEY):

S. 2623. A bill to amend the Small Business Act to clarify the Administrator's authority to make economic injury disaster loans in case of drought; to the Committee on Small Business.

AUTHORITY TO DECLARE DISASTER BECAUSE OF DROUGHT BY THE ADMINISTRATOR OF THE SMALL BUSINESS ADMINISTRATION

● Mr. BOSCHWITZ. Mr. President, I rise today to introduce legislation amending the Small Business Act which would authorize the Administrator to declare a disaster because of drought. Currently, the Administrator has such authority only in the event of floods, riots or civil disorders, or other catastrophes. A disaster declaration by the Administrator would allow small businesses to receive economic assistance loans under the Small Business Administration's disaster loan program. Although current law permits such loans if the President or the Secretary of Agriculture declares a natural disaster, my bill would ensure that the SBA Administrator has equal authority, thereby ensuring the broadest range of options to respond to the current drought.

Mr. President, I have recently returned from an extensive tour of Minnesota in which I observed the damage caused by the drought. In a word, the effect has been devastating. The combination of high temperatures and wind has shriveled crops and caused erosion of valuable top soil. I understand conditions are similar in many other States. There is little doubt that this drought will inflict serious financial injury on farmers—at a time when agriculture was just beginning to recover from several years of tough times.

Fortunately, legislation is in place to provide assistance, if necessary, for farmers who encounter financial difficulty due to the drought. My legislation focuses on another victim of the drought—the businesses that rely on farmers for their survival.

I've said before that when the farm economy hums, rural America hums. But if the farm economy is in trouble, small towns, and small businesses also suffer.

My bill simply provides that the Administrator can declare a natural disaster due to drought. It does not seek to alter the circumstances under which disaster loans can be approved. It only seeks to ensure that small businesses affected by the drought have an equal chance to obtain economic as-

sistance loans to see them through the tough times ahead.

Allowing small businesses to apply for and receive economic assistance loans will mean a great deal. In addition to avoiding closing costs, the interest on such loans cannot exceed 4 percent if no other source of credit is available. In this case, disaster loans may mean the difference between staying open or closing the door for small businesses whose main customers—farmers—are themselves experiencing financial difficulty.

Mr. President I ask unanimous consent to have a copy of my bill inserted in the RECORD at the close of my statement.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2623

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DISASTER LOANS.

Section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)) is amended by inserting before the proviso at the end of subparagraph (D), the following flush sentence: "For purposes of this paragraph, the term 'disaster' includes floods, riots or civil disorders, droughts, or other catastrophes.". ●

By Mr. BOSCHWITZ:

S. 2624. A bill to amend the Small Business Act to provide simplification of forms to encourage certified and preferred lenders to provide loans of $50,000 or less, and for other purposes; to the Committee on Small Business.

SMALL LOAN PROGRAM

● Mr. BOSCHWITZ. Mr. President, I rise today to introduce legislation of great significance to small businesses. This legislation would encourage greater participation in the Small Business Administration's guaranteed loan programs by allowing authorized lenders to make loans of less than $50,000 using forms of the lender rather than the forms approved by the Small Business Administration.

This bill is quite simple, but it has tremendous ramifications for small borrowers who have difficulty obtaining loans of less than $50,000. One of the most frequent complaints I hear when I go home to Minnesota and meet with the owners of small businesses is that they can't find a lender willing to make a small loan, say of $5,000 to $10,000. The lenders tell me they don't like to make these small loans, even with guarantees, because of the burdensome paperwork that must be completed to make an SBA loan. The effect, Mr. President, is a reduction in the capital available for small businesses or for entrepreneurs trying to get a new business off the ground.

Earlier this month I held a hearing on rural development back in Minnesota. I am pleased to say that many groups around the State, both public and private, are working to stimulate economic growth in outstate Minnesota. They aren't looking for handouts Mr. President. All they want is reasonable access to existing programs, including the SBA loan programs. My bill would level the playing field for the small commercial borrower by making it easier for lenders to participate in the SBA loan programs.

I have heard similar concerns voiced by people who provide day care services. Frequently, a day-care provider needs only a small loan to upgrade a personal residence to operate a day-care home. And yet, time and again childcare providers have told me they can't obtain loans in the $5,000 to $10,000 range.

By encouraging lenders to participate in the SBA programs, borrowers can save between 1 percent and 4 percent on the annual interest charged for a short-term loan. For a small business, this break on the rate of interest represents a real savings and may make it possible for the business to succeed.

Mr. President most of the new jobs in this country are created by small business owners. My bill will eliminate one obstacle to further economic growth and job creation. I urge my colleagues to carefully review this legislation, and I invite them to support it.

Mr. President, I ask unanimous consent that a copy of my bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2624

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FORM SIMPLIFICATION AND PREFERRED FINANCING.

Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following new paragraph:

"(17)(A) During fiscal years 1989 and 1990, in addition to the preferred lenders program authorized by the proviso in subsection (b)(7), the Administration is authorized to establish a certified loan program for lenders who establish their knowledge of Administration laws and regulations concerning loan guarantee programs and their proficiency in program requirements. In order to encourage certified lenders and preferred lenders to provide loans of $50,000 or less in guarantees to eligible small business loan applicants, the Administration shall allow lenders designated for participation in the certified loan program and in the preferred loan program to utilize the forms of the lender without regard to any forms of the Administration. The Administration may not reduce the per centum of guarantee as a criteria for eligibility for such designation.

"(B) The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or if the Administration determines that the loss experience of the lender is excessive as compared to other lenders. Suspension or revocation of such designation shall not affect any outstanding guarantee.". ●

ADDITIONAL COSPONSORS

S. 473

At the request of Mrs. KASSEBAUM, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of S. 473, a bill to regulate interstate commerce by providing for uniform standards of liability for harm arising out of general aviation accidents.

S. 684

At the request of Mr. THURMOND, his name was added as a cosponsor of S. 684, a bill to amend the Internal Revenue Code of 1986 to make permanent the targeted jobs credit.

S. 714

At the request of Mr. SPECTER, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 714, a bill to recognize the organization known as the Montford Point Marine Association, Incorporated.

S. 2036

At the request of Mr. THURMOND, the name of the Senator from California [Mr. WILSON] was added as a cosponsor of S. 2036, a bill to redefine "extortion" for purposes of the Hobbs Act.

S. 2043

At the request of Mr. KERRY, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of S. 2043, a bill to authorize demonstration projects that provide certain participants in the special supplemental food program with coupons for use at farmers markets.

S. 2094

At the request of Mr. KERRY, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 2094, a bill to amend title XVI of the Social Security Act, to provide that the existing requirements for deeming a parent's income and resources to his or her children under age 18 shall not apply in the case of certain severely disabled children, and for other purposes.

S. 2176

At the request of Mr. DIXON, the name of the Senator from Louisiana [Mr. JOHNSTON], and the Senator from Nevada [Mr. HECHT] were added as cosponsors of S. 2176, a bill to amend the Internal Revenue Code of 1986 to permit the taxfree purchase of motor fuels by individuals who are exempt from paying the motor fuels excise tax, and for other purposes.

S. 2199

At the request of Mr. CHAFEE, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of S. 2199, a bill to amend the Land and Water Conservation Act and the National Historic Preservation

Act, to establish the American Heritage Trust, for purposes of enhancing the protection of the Nation's natural, historical, cultural, and recreational heritage, and for other purposes.

S. 2213

At the request of Mr. GORE, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of S. 2213, a bill to amend the Federal Trade Commission Act to strenghten the authority of the Federal Trade Commission respecting fraud committed in connection with sales made with a telephone.

S. 2242

At the request of Mr. DASCHLE, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 2242, to provide for the continuation of certain basic services of the Postal Service consistent with Postal policies under section 101 of title 39, United States Code, and for other purposes.

S. 2340

At the request of Mr. CHILES, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 2340, a bill to amend title 28, United States Code, with respect to the configuration of the Middle and Southern Districts of Florida.

S. 2367

At the request of Mr. LAUTENBERG, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 2367, a bill to promote highway traffic safety by encouraging the States to establish measures for more effective enforcement of laws to prevent drunk driving, and for other purposes.

S. 2368

At the request of Mr. BUMPERS, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 2368, a bill to authorize the several States and the District of Columbia to collect certain taxes with respect to sales of tangible personal property by nonresident persons who solicit such sales.

S. 2428

At the request of Mr. BOSCHWITZ, the name of the Senator from Indiana [Mr. QUAYLE] was added as a cosponsor of S. 2428, a bill to amend title VII of the Civil Rights Act of 1964 to prohibit discrimination based on race, color, religion, sex, handicap, national origin, or age in employment in the legislative or judicial branches of the Federal Government; and to establish the Employment Review Board composed of senior Federal judges, which shall have authority to adjudicate claims regarding such discrimination.

S. 2480

At the request of Mr. MOYNIHAN, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 2480, a bill to amend the Internal Revenue Code of 1986 to clarify that section 457 does not apply to nonelective deferred compensation or basic employee benefits.

S. 2484

At the request of Mr. DANFORTH, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 2484, a bill to amend the Internal Revenue Code of 1986 to enhance the incentive for increasing research activities.

S. 2502

At the request of Mr. MCCAIN, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 2502, a bill to establish a task force to conduct a study relating to the reduction in use of chlorofluorocarbons and halons.

S. 2544

At the request of Mr. RIEGLE, the name of the Senator from Alabama [Mr. SHELBY] was added as a consponsor of S. 2544, a bill to amend the federal securities laws in order to facilitate cooperation between the United States and foreign countries in securities law enforcement.

S. 2597

At the request of Mr. BURDICK, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 2597, a bill to establish an interdisciplinary training grant program for the benefit of rural areas.

S. 2614

At the request of Mr. HOLLINGS, the name of the Senator from Connecticut [Mr. WEICKER] was added as a cosponsor of S. 2614, a bill to amend the National Science and Technology Policy, Organization, and Priorities Act of 1976 in order to provide for improved coordination of national scientific research efforts and to provide for a national plan to improve scientific understanding of the earth system and the effect of changes in that system on climate and human well-being.

SENATE JOINT RESOLUTION 298

At the request of Mr. D'AMATO, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of Senate Joint Resolution 298, a joint resolution designating September 1988 as "National Library Card Sign-Up Month".

SENATE JOINT RESOLUTION 320

At the request of Mr. HATCH, the names of the Senator from Alabama [Mr. HEFLIN], the Senator from North Carolina [Mr. SANFORD], and the Senator from Maine [Mr. MITCHELL] were added as cosponsors of Senate Joint Resolution 320, a joint resolution to commemorate the fiftieth anniversary of the passage of the Food, Drug and Cosmetic Act.

SENATE JOINT RESOLUTION 330

At the request of Mr. DOLE, the names of the Senator from Michigan [Mr. LEVIN], and the Senator from Oklahoma [Mr. BOREN] were added as cosponsors of Senate Joint Resolution 330, a joint resolution to provide for the designation of September 16, 1988, as "National POW/MIA Recognition Day."

SENATE JOINT RESOLUTION 342

At the request of Mr. MOYNIHAN, the name of the Senator from Nevada [Mr. HECHT] was added as a cosponsor of Senate Joint Resolution 342, a joint resolution to designate the week of November 28 through December 5, 1988, as "National Book Week."

SENATE JOINT RESOLUTION 346

At the request of Mr. LAUTENBERG, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of Senate Joint Resolution 346, a joint resolution to designate March 25, 1989, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy."

SENATE CONCURRENT RESOLUTION 109

At the request of Mr. MCCAIN, the names of the Senator from Washington [Mr. ADAMS], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Mississippi [Mr. COCHRAN], the Senator from Maine [Mr. MITCHELL], the Senator from Colorado [Mr. WIRTH], and the Senator from California [Mr. CRANSTON] were added as cosponsors of Senate Concurrent Resolution 109, a concurrent resolution expressing the sense of the Congress that the President should negotiate with the Government of Vietnam to establish interest sections in the capitals of both countries for the purpose of resolving specific issues between the countries.

SENATE RESOLUTION 409

At the request of Mr. LAUTENBERG, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of Senate Resolution 409, a resolution to express the sense of the Senate regarding the Community Development Block Grant and Urban Development Action Grant Programs.

AMENDMENT NO. 2511

At the request of Mr. HATCH, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of amendment No. 2511 intended to be proposed to S. 430, a bill to amend the Sherman Act regarding retail competition.

AMENDMENTS SUBMITTED

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, FISCAL YEAR 1989

HARKIN AMENDMENTS NOS. 2537 AND 2538

Mr. HARKIN proposed two amendments to the bill (H.R. 4776) making

appropriations for the government of the District of Columbia and for other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1989, and for other purposes; as follows:

AMENDMENT NO. 2537

On page 11 at line 9 strike "$3,692,000" and insert in lieu thereof "$4,192,000".

AMENDMENT NO. 2538

At the appropriate place in the bill:

SEC. . Such sums as may be necessary for fiscal year 1989 pay raises for programs funded by this Act shall be absorbed within the levels appropriated in this Act.

HELMS AMENDMENT NO. 2539

Mr. NICKLES (for Mr. HELMS) proposed an amendment to the bill H.R. 4776, supra; as follows:

At the appropriate place, add the following:

SEC. . None of the federal funds appropriated by this Act shall be obligated or expended after December 31, 1988, if on that date the District of Columbia has not repealed D.C. Law 6-170, the Prohibition of Discrimination in the Provision of Insurance Act of 1986 (D.C. Law 6-170).

HUMPHREY AMENDMENT NO. 2540

Mr. HUMPHREY proposed an amendment to the bill H.R. 4776, supra; as follows:

At the appropriate place in the bill, insert the following new section:

"SEC. None of the funds appropriated under this Act for the Mayor of the District of Columbia shall be expended after January 1, 1989, if on that date, using existing powers, the Department of Human Services has not implemented a system of mandatory reporting of individual abortions performed in the District of Columbia; and categories of data collected under such system shall be substantially similar to those collected by the National Center for Health Statistics: Provided, that the Department of Human Services shall not require reporting of the identity of the aborting woman or the abortion provider, and shall ensure that the identity of the aborting woman and abortion provider remain strictly confidential, and data be used for statistical purposes only.

ARMSTRONG (AND OTHERS) AMENDMENT NO. 2541

Mr. ARMSTRONG (for himself, Mr. WALLOP, Mr. HATCH, and Mr. NICKLES) proposed an amendment to the bill H.R. 4776, supra; as follows:

At the appropriate place in the act, insert the following:

"NATION'S CAPITAL RELIGIOUS LIBERTY AND ACADEMIC FREEDOM ACT

"SEC. . (a) This section may be cited as the "Nation's Capital Religious Liberty and Academic Freedom Act".

"(b) None of the funds appropriated by this Act shall be obligated or expended after December 31, 1988, if on that date the District of Columbia has not adopted subsection (c) of this section.

"(c) Section 1-2520 of the District of Columbia Code (1981 edition) is amended by adding after subsection (2) the following new subsection:

"(3) Notwithstanding any other provision of the laws of the District of Columbia, it shall not be an unlawful discriminatory practice in the District of Columbia for any educational institution that is affiliated with a religious organization or closely associated with the tenets of a religious organization to deny, restrict, abridge, or condition—

(A) the use of any fund, service, facility, or benefit; or

(B) the granting of any endorsement, approval, or recognition, to any person or persons that are organized for, or engaged in, promoting, encouraging, or condoning any homosexual act, lifestyle, orientation, or belief.'"

NOTICE OF HEARING

SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION

Mr. MELCHER. Mr. President, I would like to announce for the information of the Senate and the public that the oversight hearing before the Subcommittee on Mineral Resources Development and Production of the Committee on Energy and Natural Resources previously scheduled for Tuesday, July 12, at 10 a.m., has been rescheduled for Tuesday, July 12, at 1 p.m. in room SD-366 of the Senate Dirksen Office Building. The purpose of this oversight hearing is to receive testimony concerning the Department of the Interior's royalty management program.

For further information, please contact Patricia Beneke at (202) 224-2383 or Lisa Vehmas at (202) 224-7555.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE AND CIVIL SERVICE

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Federal Services, Post Office, and Civil Service, Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Friday, July 8, 1988, on the use of Government consultants by the Department of Defense.

The PRESIDING OFFICER. Without objection, it is ordered.

COMMITTEE ON ARMED SERVICES

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Friday, July 8, 1988. In executive session to discuss the fiscal year 1989 defense appropriations bill and possible Armed Services Committee amendments thereto.

The PRESIDING OFFICER. Without objection, it is ordered.

ADDITIONAL STATEMENTS

PUERTO RICAN DAY PARADE

● Mr. LAUTENBERG. Mr. President, I would like to call attention to the 26th annual New Jersey Puerto Rican Day Parade which will take place Sunday, July 29. This year, the parade is dedicated to the achievements of New Jersey's Puerto Rican women, who have excelled in both public life and in many other endeavors in our State. Of course, this parade is also a tribute to the many and varied achievements of the Puerto Rican community of New Jersey, and a celebration of the 36th anniversary of the establishment of the Commonwealth of Puerto Rico.

The grand marshal of the parade will be the Honorable Nydia Davila Colon, a Freeholder from Hudson and past president of the Board of Freeholders. The Madrina, or Godmother of the parade will be the Honorable Maria Magda O'Keefe, who is the first Puerto Rican ever to be elected chairman of the city council in Paterson.

These women exemplify the outstanding public service of Puerto Rican women in New Jersey, and their achievements are a credit to the entire Puerto Rican community.

Since 1962, this parade has grown from a small local event in Newark, NJ, to one of the most significant Puerto Rican statewide events. It is estimated that this year's parade will attract many thousands of onlookers along the parade route of Broad Street in Newark.

As in the past, the majority of the parade participants will be from the Puerto Rican community. However, many other ethnic groups will be represented as participants and spectators. Diverse ethnic cooperation is what makes New Jersey and our Nation a living witness to the spirit of the Statue of Liberty.

Traditionally, this parade is the culmination of a year of activities for its sponsor, the Puerto Rican Statewide Parade of New Jersey, Inc. One of this nonprofit organization's major functions is the granting of numerous scholarships to needy Puerto Rican students throughout our State. All of the proceeds of this parade will go to fund such scholarships.

I am proud to again draw my colleagues' attention to this wonderful celebration of Puerto Rican women in this year's Annual New Jersey Puerto Rican Day Parade and extend my sincerest congratulations to my many friends in the New Jersey Puerto Rican community during their days of celebration.●

TOOLS FOR COPING WITH CHANGE

● Mr. DURENBERGER. Mr. President, today I want to include in the RECORD a copy of my preliminary report to the Northeast-Midwest Coalition which I released earlier this week. It is entitled "Tools for Coping With Change" and it deals generally with America's serious rural economic crisis, and specifically with the drought which is having a range of devastating effects on rural communities.

I will speak on these issues at greater length next week, Mr. President, but I wanted my colleagues and other readers of the RECORD to have an opportunity to review the preliminary report prior to Senate action next week on the emergency drought package.

I ask that the preliminary report be printed in the RECORD.

The report follows:

[Preliminary Report to the Northeast-Midwest Coalition]

TOLLS FOR COPING WITH CHANGE

(By Senator Dave Durenberger, Co-Chair, Rural Economic Development Task Force, June 1988)

INTRODUCTION

In 1986, a report entitled "Governing the Heartland: Can Rural Governments Survive the Farm Crisis?" was published by the Intergovernmental Relation Subcommittee, which I chaired. The thrust of that report was that federal policy must recognize the inter-connection between all the elements of rural life. What began as a crisis in agriculture in the early eighties and in energy in the mid-eighties has become a crisis for the entire heartland. It is not just farmers and miners and plant workers who are threatened: it is also teachers, health professionals and other service providers. In order to deal with rural problems, attention must be paid to the entire system, not just a single element.

This preliminary report is a continuation of that effort to encourage policy-makers to take a comprehensive approach to rural development problems. On the basis of a number of field hearings around Minnesota, this report discusses current economic development problems and opportunities, and presents recommendations for federal action. In addition, this report recommends a number of federal actions to respond to the current drought in the upper Midwest.

The Northeast-Midwest Coalition is a bipartisan alliance of 36 U.S. Senators from the Midwest, the Mid-Atlantic, and New England, who organized in 1978 to better serve the interests of their states. With the assistance of the Northeast-Midwest Institute, the Coalition seeks to develop federal policies and legislation to address economic development, infrastructure and resource issues. In February of this year, the Coalition created a Rural Economic Development Task Force, Co-chaired by Senator Tom Harkin (D-IA) and myself.

The Senate will soon consider both a rural development bill and a drought relief bill. It is hoped that this report will help direct further study and legislative action.

DAVE DURENBERGER,
U.S. Senator.

JUNE 1988.

I. THE CONTEXT OF RURAL ECONOMIC DEVELOPMENT

A. The importance of rural America

The value of the rural economy to the national economy as a whole is frequently underestimated. In 1988, America's 2441 rural counties contained 60 million people, one-fourth of the nation's population. These counties provide: (1) more than 90 percent of the nation's minerals and energy products; (2) nearly all of the nation's food production and most of the wheat, corn, soybeans, cotton, and tobacco currently exported to other nations of the world; (3) many of the large-scale public and private recreational areas, and an increasing number of retirement communities; (4) last and most important, rural America remains the wellspring of the cultural and spiritual values that have made this nation strong. The people that settled our rural areas brought with them a sense of self-reliance and a willingness to work long and hard to succeed. But these settlers also offered a spirit of neighborliness to their fellows at times of personal and financial crisis. It is this set of values that many of our nation's leaders still retain—values that allow the nation to maintain a link with the past and provide the strength that will be needed in the future.

But all is not well in rural America. Federal data shows that: (1) unemployment is 33 percent higher in rural areas than in the nation's large cities, and all counties with an unemployment rate double the national average are in rural areas; (2) job formation in rural areas lags. Between 1980 and 1987, the total civilian economy created approximately 13.1 million new jobs, while the rural economy experienced a net loss of jobs; (3) rural residents are more likely to be poor. In 1986, 9.7 million, or 30 percent of the nation's poverty-stricken population, lived in rural parts of the nation; (4) the incidence of substandard housing continues to be more than three times as high in rural areas as it is in urban. Almost 1.9 million rural households still live in housing that is hazardous to health and safety.

B. Key Issues

Expanding unemployment, increased poverty, and declining job formation and health standards have created a need to provide rural America with a series of new economic initiatives. The incidence of substandard housing marks rural America's economic slide.

At times in the past century, the financial condition of rural America fell below that of the metropolitan U.S. But the urbanizing world needed the grain and forage crops grown by our Great Plains states, and eventually prosperity returned.

However, a new problem has disadvantaged rural America. The international move into the information and electronics era has created a new economic elite in those states bordering the Atlantic and Pacific Oceans. As the United States economy recovered from the 1982-83 recession, imports surged and a new group of workers emerged to service and distribute these imports. As the service economy in our nation expanded geometrically, our agricultural, forest, mineral mining and basic manufacturing sectors were hard hit by imports from low wage, newly industrialized countries. And having the greatest impact of all, the worldwide "Green Revolution" created agricultural gluts in nations that had not been able to feed their populations for decades or even centuries, therefore removing the need for food from America.

With the emerging world economy of the eighties and nineties, a far higher premium has been placed on maximizing the efficiency of the American economy to bolster its competitive position. Venture capital that was once available in the rural economy has been diverted to fast pay-off, high growth investments. At the same time, federal tax policy has tilted even more steeply toward a consumption economy, rather than a savings and investment economy, exacerbating rural America's capital problems. For these reasons, rural areas have been slow to recover from the early eighties recession, and in some ways, the general recovery has proceeded at its expense.

In spite of these recent trends, the food-producing capacity of "Heartland America" remains one of the world's strategic assets. But if the products provided by this region continue to decline, the nation could continue its current drift into "two Americas," and the distressed economies located between the Sierra and Appalachian Mountains could come to depend permanently on federal subsidies from our coastal states. We must innovate and create new products and services provided by rural America. If we are to respond adequately, we must rally to the challenge facing our agricultural and manufacturing base.

C. The history of rural development

Federal programs designed to support economic development in rural areas are as old as the nation. In the 175 year period between 1789 and 1964, most rural development programs created by Congress were narrow in scope and intended to provide rural America with technologies and amenities that had become commonplace in urban areas.

The demographic changes in rural America have been staggering. In 1900, over 60% of the United States' 76 million citizens lived in "non-metropolitan" places. By the year two thousand, it is estimated that only one in four will remain there. While urbanization has its economic advantages, there are obvious signs in our culture and social structure of some of its cost.

Three of the most important 19th Century rural development initiatives include: (1) construction of the "National Road" from Baltimore and Washington, D.C. to Ohio, then to Indiana and finally to the edge of the frontier in Illinois; (2) land grant awards totalling a billion acres to a small number of railroads, permitting them to complete the nation's transcontinental rail system; (3) the Homestead Act of 1862, which provided land grant programs used by the states to create a system of public universities (then called agricultural and mechanical colleges) in each state. These colleges provided a post-secondary eduation to many young people that otherwise would have been denied it.

Major 20th Century rural development single purpose programs include: (1) paved "farm-to-market" roads; (2) rural electrification and telephone service; (3) rural parcel post delivery; (4) sewer and water treatment facilities; and (5) farm credit and secondary market programs.

After 1965, the narrow single purpose programs gave way to a variety of multi-purpose programs, including the Rural Development Act of 1972 and the Rural Development Policy Act of 1980. These acts were adopted in an era in which the federal government dictated the content of local programs from Washington, D.C. or from regional offices in large cities, far from the

community where the program or project was implemented.

The 1972 Act required that a local planning process be developed prior to the funding of any local project. Unfortunately, Congress did not provide planning funds until seven years after the legislation was signed into law, and then for only two years. The result was that many rural development projects were funded by USDA without coordination of local and national goals.

The national strategy requirement of the 1980 Policy Act was infrequently honored by the USDA Undersecretary for Small Communities and Rural Development. Hence, rural communities lacked the program focus that could have resulted from a coordinated national rural economic development policy.

It is also important to recognize the trend in overall U.S. social policies during this period, of which rural development is just a part. From the period of the late sixties until the start of the deficit problems in 1978 to the present, there has been a basic change in the role of the federal government. During the prior period, state and local areas, in effect, traded control for dollars: "we, the federal government, will give you funds if you, the local constituency, will solve your problems our way." Beginning in 1981, we have embarked on a course of *de facto* "devolution"; the federal government laying off responsibilities to small units of governments. Unfortunately the devolution has fallen far short of a "new federalism" for two reasons: 1. the federal government has thus far not been able to subdue its desire to tell the local units of government what to do, and Washington continues to issue costly mandates; and 2. the federal government has not provided the "tax room," i.e. returning the states' traditional revenue raising opportunities. The result has been a lopsided intergovernmental relationship, where Washington is doing all the taking and rural units of government are doing the giving.

D. Successful and failed rural economic development programs

In general, the narrow single-purpose programs discussed above have been successful, while the more recent multi-purpose programs have not met the expectations of their authors.

Characteristics of successful rural development programs include: (1) a narrow, easily understood mission. For example, one important rural economic development program has as its goal the mission of providing electric power to America's farmers and rural residents; (2) the use of a proven technology to provide the service (i.e. the electric light, telephone, and paved roads) were a proven fact in towns and cities before they were extended to rural areas and could be provided to rural residents with no new technological innovations; (3) a system construction that could be spread over a number of fiscal years, resulting in a close relationship between the amount of the system to be built in any year and the sum of money made available for construction; (4) a system desired by the constituency it is designed to serve. For example, rural Americans knew about electric power a long time before it was extended to rural areas and most rural residents desired this service; and (5) little long-range planning was required by the rural residents who would benefit from the new service.

Less successful programs include those that: (1) provide insufficient funds to reach the goals of the program; (2) contain eligibility criteria that prove difficult to understand and that cause local jurisdictions be episodically eligible; (3) require substantial amounts of inter-agency coordination at the federal and state levels of government; (4) the federal department designated as the lead agency has only a marginal "stake" in the program; (5) utilize federal personnel that already have other full-time program responsibilities; and (6) require a substantial amount of complex, long-range planning by the people the program is designed to serve and little or no effort is made to train the local elected officials and private citizens who are responsible for the planning.

E. The future role of rural communities in the national economy

If the rural economy is to play an important role in the continued development of the nation over the next 10 to 15 years, it must be restructured and several urgent realities must be addressed.

Some of the more important of these realities include: (1) the realization that manipulation of natural resources no longer guarantees economic success; (2) control over local destiny in many rural communities is diminished; (3) rural areas will continue to depend on volunteer leadership; (4) service demands on local governments are expanding as revenues diminish; and (5) there are strong economic forces which tend to draw human and financial resources out of rural America.

Coming to grips with these and other economic changes will present a number of serious challenges to rural America including: (1) the need to improve the competitiveness of rural businesses by using new technologies to create new products from resources common to the rural sections of the nation; (2) the problem of diversifying the rural economy by taking advantage of new development opportunities not directly related to value-added manipulation of raw materials; and (3) the challenge of maintaining and improving the rural quality of life in education, health care, community services, and environment.

II. DIRECTIONS FOR NATIONAL POLICY: THE MINNESOTA EXPERIENCE

During three state-wide trips around Minnesota in March, April and May of this year, I had the opportunity to conduct informal hearings with a wide variety of groups and individuals in over thirty communities. Over six hundred Minnesotans participated in those meetings, with over one hundred giving testimony or submitting statements in writing. Those who participated included local elected officials such as mayors, city council members, county commissioners, regional development commission members, as well as staff. In addition, bankers, local business owners, representatives of private economic development initiatives, and farmers took time to share their concerns. These meetings served to complement and supplement the knowledge I have gained from literally hundreds of meetings over the last ten years across Greater Minnesota. While only a few of those meetings could be transcribed, a wealth of information was presented. In the next several pages, I want to try to summarize the rural development problems which were discussed, the opportunities which also exist, and present a number of policy recommendations for federal action.

The Minnesota experience, I believe, is similar to conditions elsewhere, both as to problems and opportunities. The lessons and recommendations which come out of our experience have general applicability to other regions of the country, and form a solid base for national action.

A. Nature of the rural development problem

Based on my experiences in Minnesota over the last several years, the nature of rural economic development problem appears to break down into three areas of concern:

1. Rural Competitive Disadvantages

It is a basic economic fact of life that goods and services, and the jobs which produce them, are allocated by the marketplace to areas of concentration of population. This "law of large numbers," as I call it, means that the ability to spread costs over a large market base, economies of scale, and potential for growth will mean that without some changes in policies, economic activity will continue to gravitate toward areas like the Twin Cities. The law of large numbers also creates a self-reinforcing trend: as the rural economic base shrinks and the urban/suburban economy grows, the trend toward urbanization accelerates.

A secondary effect is the competition which develops among businesses and towns within the rural economy. Not only must businesses and towns compete with the Twin Cities for resources, population and skilled labor, but they must also compete against each other.

At the macro economic level, rural areas have suffered from increased competition for customers in the international marketplace. Because of massive debt problems faced by many third world nations, we have inadvertently created powerful incentive for those planned economies to shift resources into agricultural production in order to obtain hard currency. That has turned many former customers into competitors. Producers of agricultural commodities lose both ways.

In addition, the rural economy has suffered at least three "body blows"; economic catastrophies whose ramifications are still rippling through the rural economy. The grain embargo of 1979–81 severely damaged the reputation of the United States as a reliable seller of grain, and at the same time sent a strong signal to other nations, such as Argentina and the EEC, to increase production to fill the gap in the market.

The farm crisis of the 1980's, from which we have only just begun to emerge, with low commodity prices, credit shortages and falling land values, devastated the rural economy by undermining the rural tax base, financial institutions and the health care system. The injection of federal funds through the 1985 farm bill and the Farm Credit Act of 1987, together with the positive effects of low interest rates and energy costs and a more realistic dollar had begun a rural recovery of sorts.

The third and most current problem is the continuing drought of 1988. The absence of proper rain fall, catastrophic small grain crop losses, and the absence of affordable feed for livestock and dairy producers threatens to wipe out all the gains of the last several years. The victims of the drought are not just farmers; small towns, which depend on agricultural business, purchases and tax revenues, are hurting now and will be hurting in the months and years to come.

2. Governance Problems

In my 1986 report as Chairman of the Intergovernmental Relations Subcommittee entitled "Governing the Heartland: Can

Rural Governments Survive the Farm Crisis", we established the economic links between the farm economy and the broader rural economy, specifically as it relates to the ability of rural governments to provide necessary services to their constituencies. Given the nature of the fiscal structure of those governments, that report indicated that the declining land values and agricultural sales would nearly bankrupt most rural governments and accelerate a downward economic spiral as declining public services and quality of life would lead to a population decline and further erosion of the tax base.

The experience of the last several years has confirmed the conclusions of the report. Fortunately, the improvement of the farm economy has mitigated some of the effects on rural government, but drought problems once again threaten to restart the downward spiral described by the "Heartland" report.

Maintaining strong, independent local units of government is essential to revitalize rural communities; economic events of the last decade have tended to undermine rather than reinforce local government.

3. Quality of Life Problems

The key to maintaining the rural population base is a desirable quality of life for rural citizens and families. Economic competitiveness and governance difficulties provide a dual threat to rural quality of life.

Job opportunities for both heads of households and other family members are necessary for an adequate standard of living. Off-farm income has been shown to be a key element in the livelihood of farm families, because it compensates for seasonal cash flow problems and short term price fluctuations. Providing jobs for young people is a major attraction to keeping their skills and purchasing power in town. Also, jobs off of the farm sometimes offer the benefit of health insurance. Without this benefit, many farm families would not carry health insurance, since the cost is prohibitive. While the job may not mean a great deal of take home pay, the benefit of health insurance for the family can outweigh the low pay and time away from the farm.

Rural government services, education, infrastructure, health care, and fire and policy protection are the other major quality of life factors. Education, which is primarily a state and local responsibility, is a critical factor because it determines the skills level of future employees, and is an important factor for young families.

A major problem on the horizon for rural communities is the threat posed to rural water supplies by groundwater contamination. 90% of rural Minnesotans drink their water "raw" from underground sources instead of treated water systems. Recent tests in various places around the upper midwest have shown an alarming increase in the number of wells contaminated by pesticides and fertilizers. Rural communities can ill-afford the costly process of cleaning up contiminated groundwater or providing alternative supplies. Vaughn Bien, the Mayor of Goodhue, Minnesota, (population 657) discussed with me in February the plight their community faces as they try to find a source of drinking water as their municipal well was tainted by nitrates. This contamination made Goodhue's water supply unsafe for infants under six months of age to consume. Goodhue has a total annual budget of about $173,000, yet the community is spending about $300,000 to extend its well into deeper and cleaner groundwater and to dig a second well. As this example shows, it is a costly process with a very costly drain on the local economy.

B. Rural economic development opportunities

In the discussion of the problems of rural communities, it is very important not to obscure the numerous important economic development opportunities which exist in rural communities, which point to a very different and promising future, if the forces of change can be properly managed and rural citizens are given the proper tools to cope with change.

There are several advantages which rural areas enjoy in the area of economic competitiveness over suburban/urban areas:

1. Innovative Uses for Agricultural Products

Because of the burgeoning bio-technology industry and concerns over new methods to find reliable, environmentally safe methods of providing products from energy to packaging, there is new interest in using agricultural products to serve a number of domestic and international markets.

Ethanol production, which utilizes corn to produce fuel and gasoline additives, offers a secure and clean source of energy for the United States. As lead is being removed from America's gasoline supplies, ethanol becomes more attractive as a clean burning, high octane additive.

Minnesota has a corn processing plant located in Marshall (population 11,000). Minnesota Corn Processors, the farmer-owned cooperative which started in 1980, has 2,100 members who have the objective of generating higher returns for the corn production of its members by processing corn through a wet milling plant into starches, syrups, and feed products. Earlier this year, MCP decided to expand, and are in the midst of completing their start-up phase for ethanol production.

Recent research has demonstrated the feasibility of making biodegradable packaging material from corn. The distinct advantage of biodegradability addresses the critical issue of solid waste disposal far better than plastic alternatives. In fact, the Minnesota Corn Growers Association, which has been promoting and developing markets for Minnesota corn, now has developed this type of bag.

Continuing research also promises the production of soybean oil as an additive in printing ink, replacing petroleum-based ink. Soy ink is competitively priced at a consistently high quality. It too is biodegradable and environmentally safe, reducing disposal problems. In addition, soy ink has less rub-off and gets better "mileage" on the press. In Minnesota, there are several publications using soy ink, including the Rochester-based Agri News, Western Printers from Montevideo, The Farmer/The Dakota Farmer, the St. Paul Pioneer Press and Dispatch, and the Waseca Area Shopper.

Another development occurring with the assistance of the American Soybean Association is the use of Soybean Crop Oil in pesticide application. Soybean Crop Oil may be used as a wetting agent to reduce the surface tension of the pesticide spray droplet, reducing the tendency of the spray droplet to bead up on the leaf and increasing the leaf area covered by each droplet. Soybean Crop Oil is currently being produced by Cenex/Land O' Lakes, two regional farm cooperatives headquartered in Minnesota.

2. Close to the Farm, Value-Added Processing

In recent years, positive results have been enjoyed by a number of communities that process agricultural products close to home, rather than simply shipping raw material for remote processing. This provides a more economical use of these commodities through decreased transportation of bulk materials and shipment in finished form. The economic benefits to communities are significant as a source of off-farm income.

I witnessed an outstanding example of this in Perham, Minnesota (population 2,000), which boasts 21 businesses. Using locally grown commodities such as 35 million pounds of potatoes and 1.25 million pounds of popcorn, Barrel O' Fun Potato Chips manufactures potato chips and other snack foods nationally. The Perham Egg Plant processes 18 million dozen eggs—that's 216 million eggs per year! Tuffy's Pet Food uses 6 million pounds of corn gluten meal and 4 million pounds of flour. 3,000 semi-loads of materials arrive a year, shipping out 25 semi's a day. The dairy industry in the area is not to be forgotten: when the remodeling is completed this summer, the world's largest cheese plant, owned by Land O' Lakes, will be located in this community that is some 150 miles from the Minneapolis/St. Paul metropolitan area. 40 semi's pass through the cheese and dry milk processing plant. The success of Perham didn't just happen by accident; there were entrepeneurs, like Kenny Nelson and his late father, who developed their ideas and built on the concept of using the local products and processing them before shipping them out of the community. Through their work, the Nelson's created over 800 jobs in the community. Perham uses a different approach than most to attract business—they don't make promises to give land away or give tax benefits—they expect industry and businesses that move to their community to pay their own way. The community leaders believe that success breeds success.

3. Dispersed Information Processing

An important growth area in our economy has been created by telecommunications technologies, which virtually eliminate traditional notions of the work place. Through computer networks, it is unnecessary for workers to be centralized in one location; workers can perform information processing operations at remote sites, and information, rather than people, are moved. With labor shortages in urban areas and labor surpluses in rural areas, there are tremendous opportunities for diversification of the rural economy through information processing.

We witnessed what may be the vanguard of this kind of activity in International Falls, Minnesota, with several dozen workers employed to process insurance forms for a New York City firm. Labor shortages in large cities will persist and grow over the next two decades; communication links between that shortage and the rural labor surplus can solve two economic problems at the same time.

4. Rural Entrepreneurship

The traditional nature of the rural economy has been one in which the industries of agriculture, forestry, and mining are primary. While these industries will continue to be the staple of the rural economy, we are witnessing in Minnesota the emergence of rural entrepreneurs; business people with innovative ideas for products and services which take advantage of the strength of the

rural economy, and successfully target markets in urban areas.

One example that we have observed in Minnesota has been the development of industries which complement the agricultural economy. For example, outside of Luverne, Minnesota, a thriving fur industry has grown up. Because of the seasonal dynamics of mink "farming," labor is needed in the late fall and winter months, when agricultural workers have greater opportunities to work off of the farm. Feeding the animals also consumes locally produced grain and organic solid wastes. Mink farms have made a small but valuable contribution to the diversification and stability of an area which is highly vulnerable to cyclical changes in the farm economy.

We observed another example of rural entrepreneurship in Young America, Minnesota (population 1,237). The Young America Corporation handles manufacturers' rebates from around the country. In 1972 and 1973, the Norwood/Young America Development Corporation helped this business get started through an SBA 501 loan. Banks also participated—bonds were sold, creating bond holders. At the start they employed 19 people, and now they employ some 1,200 people. Part of the reason for their successs is Jay Ecklund, the president of the corporation since 1978.

Yet another example is the Minnesota Marketplace program, which is coordinated through the Region 5 Development Commission based in the north central city of Staples, Minnesota. This program is designed to create and retain jobs through import substitution. Rebecca Sellnow, the business developer for the program, meets with businesses and helps them identify goods and services that are currently purchased outside of the state of Minnesota. Minnesota Marketplace searches for existing suppliers in Minnesota that could produce and/or supply the goods and services needed. The name of the purchasing business is kept confidential. The goal is to bring savings to the purchaser and additional business to the supplier. Seven months after the program began on June 1, 1987, 5 jobs were created, 20 were retained, $212,000 in contracts were awarded to local businesses, $20,000 was spent in new capital expenditures, and $30,000 in savings to the purchasers was realized. This is a total economic development program.

These are but a few of the many examples of the ingenuity of rural entrepreneurs who are tapping the competitive advantages of the rural economy to provide jobs and diversify the economy.

5. Local Leadership

There is great value, in an economic sense, in people who are willing to make an investment of themselves, and their resources in the viability of a town. Loyalty to a place, rather than pure profit motive decisionmaking, is a powerful force. In many of my meetings across Minnesota, I witnessed outstanding local leadership which 1) assessed the needs of their community; 2) sized up the competition for resources they needed and products they could produce; and 3) implemented a plan to point their community in the right direction and get citizens to pitch in together to get the job done.

Madelia, Minnesota was an excellent example. Drawing together the various elements of the community—business, government, civil organizations, churches and farmers—the community leaders of Madelia developed what amounted to a survival plan for the town. Through the unified efforts of folks pulling together, they were able to pull Madelia through tough times. Now there are new businesses on Main Street and the town has a very successful revolving loan fund for business expansion and new start-ups. But the key was the leadership that could pull the town together—the leadership of Mayor Dale Williams, the city council, business owners, and concerned citizens who were willing to be open and talk about the impact of the farm crisis on their businesses, families, and the community. Without their dedication and the dedication of countless other elected officials, small communities would be left in the dark to work on economic development.

Minnesota has also benefited greatly from regional development commissions, of which there are nine in Greater Minnesota. These state-chartered organizations, made up local elected officials, supplement local community leadership in three ways: (1) they provide essential communities with information and technical and legal help regarding state and federal grant and loan programs to provide capital to businesses; (2) they provide access to other kinds of marketing and technical studies about new products and uses; and (3) they provide a planning component within regions, so that communities develop complementary rather than competitive economic plans.

A unique concept was explained to me by Larry Anderson of Frost (population 250), in the southern Minnesotan county of Faribault. Faribault County is a rural county with no major population center. The total county population is 19,000, with its small cities ranging in size from a couple hundred to about 4,000 people. Instead of competing among themselves, the communities united to create the Faribault County Economic Development Commission. Their goal is to "sell" the entire area. With the support of the County Board of Commissioners, they accepted the responsibility for funding and staffing their own efforts. With a beginning annual appropriation of $100,000 to hire professional staff, they began a marketing campaign, brought community leaders and organizations together, and (most importantly) brought new jobs to Faribault County. The results since June of 1986 show 61 new full-time equivalent jobs and a payroll of $686,000. They have also established a revolving loan fund which has assisted 11 county firms with loans that total $211,000. The total investment for the projects of these 11 companies is more than $2,000,000. This amounts to an investment per job of $3,653 by the county development agency. Each dollar invested by the county has brought a return of more than nine dollars. This was accomplished in 22 months!

There are four other forms of rural leadership which help to maintain continuity and direction in rural Minnesota.

First, Rural Electric Association Cooperatives: For most of this century, cooperatives have been the sum and substance of development effort. Addressing the competitive disadvantages of rural citizens as both buyers and seller, and meeting their urgent needs for utilities, which the marketplace would not or could not produce, coops have done a tremendous service to rural residents. The REAs will continue to provide a vital source of leadership and market-based expertise for solutions to today's rural problems.

Second, religious and fraternal organizations have been the backbone of the spiritual integrity of rural communities. Meeting the traditional needs of families and the needy in rural communities, as well as nontraditional services such as insurance sales, these organizations teach and practice the values for which rural areas are renown. In my own state of Minnesota, the Rural Life Councils of various dioceses of the Roman Catholic Church and Lutheran Social Services ministries have provided important sustaining strength during the difficult times of the last decade, especially when the public agencies could not meet many social needs, and can be depended upon to provide leadership in the future.

Third, philanthropic organizations, also make valuable contributions to rural communities. The McKnight Foundation, the largest philanthropic organization in Minnesota, announced in March of 1986 their plan to give away $15 million over two years to outstate economic development and human service programs. Outstate Minnesota contains half of the population, but receives only 11 percent of Minnesota's foundation money. As a result, six regional "initiative funds" were organized and between 2.1 and 2.9 million dollars were given to seek new ways to stimulate economic development and to address human needs. McKnight's goal is decentralized grantmaking that uses the people closest to the problems to make decisions. Each region has its own board of members from a diverse background; from education and social service to civic activity, business and government.

Finally, the new actor on the rural economic development horizon is the Greater Minnesota Corporation, which will manage state development programs in rural areas, as well as provide valuable technical and government liaison services to rural communities. Organizations of this type can play a very important role in mediating the relationship between local governments, state agencies and federal departments. This can be an extremely beneficial factor in getting help where it is most needed and can do the most good.

6. Rural Quality of Life

There are still substantial attractions to rural living which will continue to meet the needs of current residents and provide attractions for those who live in growing urban and suburban environments. As the basic infrastructure systems of the urban areas in transportation, disposal of waste and pollutants, and social services reach capacity in the next decade, there will be an increasing need for recreational opportunities in rural areas. l eisure time is projected to continue its increase, with a greater demand for recreational activities. With the potential for the dispersion of information technologies, we may even see a reverse migration of some level.

One situation I encountered was the case of the Seafest Corporation, an employer of 140 people in Motley, Minnesota. When Seafest's parent company, International Multifoods of Minneapolis, sought a manager for its subsidiary, they wanted an expert in the crabmeat market. They found that person in Motley's Loren Morey. When Morey refused to leave his home town in the lake country of central Minnesota, International Multifoods decided to move its subsidiary to him. That turned out to be a wise decision for the company, as well as a very desirable outcome for both Morey and his neighbors in Motley.

7. Rural Education

Education is extremely important to Minnesotans, especially to those from small

towns around the state. The pride of a community in many cases is its school band, the debating team, and its athletic programs. In addition to the contribution of these extracurricular activities, most citizens want to make sure that their children receive quality education from kindergarten through 12th grade and beyond. The school becomes the hub of activity for the community, and the residents know that schools are where the future of their community and country is determined. This is why schools are pairing and sharing programs to enable their students to have the best education possible. This is also why telecommunications systems are playing a role in linking various school systems together. A computer system in west central Minnesota links the paired school system of Elbow Lake, Wendell, and Barrett with the school systems of Battle Lake, Underwood, and Ashby.

Equally as important as the early years of education are the community colleges, area vocational technical institutes, the state college system, and the University system, in meeting the needs of state residents. Education is extremely important in determining the future of individuals, and may assist them in making a career change to meet their needs. For example, the Granite Falls Area Vocational Technical Institute has retrained 18,000 people for employment. Much of the need for re-training resulted from the farm crisis, which caused farmers or their families to seek outside sources of employment to contribute to the family income. With a quality education system so close to them, people in the Granite Falls area were able to gain additional skills without having to spend a great deal of money.

In addition to re-training persons suffering from the farm crisis, schools also contribute to the rural economy through technological innovations. For instance, Marshall's Southwest State University offers a "Science and Technology Center" that has been very innovative with incubators.

8. Rural Resilience

And finally, all of these factors, plus an intangible but very real sense of determination which I have experienced in the people of Minnesota's rural communities, is a unique rural resilience. These people have already survived many an economic downturn and natural disaster. Their fortitude is described by many as a "pioneer spirit" inherited from their predecessors on the prairie. I believe that the character of rural Minnesota goes beyond the "pioneer spirit" and includes a strong work ethic to get things done and get them done correctly. It is also built on a sense of caring for the community and family. In many of the small towns and cities around the state, people know each other well, and they all work together to solve the problems of the members of the community. Their ties to the family go beyond their neighbor down the road or across the street, or their third cousin by marriage. As the saying goes, you can take the girl or the boy out of the country, but you can't take the country out of the girl or boy. A person from the country never leaves it—when they return home, someone will always wave a hand to welcome them. Many rural residents also have a spiritual belief that working together can accomplish the impossible. Any economic analysis which fails to account for this determination to stay and make a go of it regardless of the circumstances is destined not only to sell these people short, but to fail in its overly pessimistic predictions.

C. National purposes in rural development

There are indeed signs for optimism in the rural communities of Minnesota, in spite of the difficulties of the last decade. The challenge to government at all levels is to find ways to (1) address those problems which still create competitive disadvantages, quality of life concerns and the crisis in rural governance; (2) encourage diversification, innovation, entrepreneurship, local leadership and quality of life advantages; and (3) in an era of severely constrained resources in Washington, and in light of the failure of past efforts to stimulate rural development, to create tools by which local leadership can cope with changing economic conditions.

Government cannot, and should not, be a managing partner in the revitalization of rural communities. But it should do its best not to exacerbate problems, and should cooperate where it can in the efforts of rural communities to solve their own problems and take advantage of their own opportunities. To carry that out, we need to define and understand the national purposes of rural development and make policy recommendations to carry them out.

America's stake in these communities and its rural citizenry is not based on nostalgia or Norman Rockwell appreciation for the pastoral existence of rural life. It rests instead on an appreciation for the contribution small communities, small businesses, and families make to the economic and social fabric of our nation. We can ill-afford, in an era of increased international competitiveness, to allow the value of our rural resources to decline. Centralization of the farm economy and the accumulation of large areas of land by corporations is neither good economic nor social policy. Central cities are not equipped to receive an influx of population from rural areas which can no longer sustain its population base. Government is not in a position to step in and provide all of the social services these towns provide to their citizens because they are a "community."

All Americans have a stake in rural America, and our national priorities and actions should reflect that fact.

D. Recommendations for national policy

The following six principles are presented as logical and effective components of a national rural development policy. They do not exhaust the legitimate role of the federal government, but they appear to be areas in which the national government can cooperate, make a long term commitment that can be kept, and efficiently utilize the scarce rural development funds that are likely to be available in times of increasing fiscal constraints at the federal level. Where appropriate, specific solutions are proposed.

Recommendation #1: Setting National Economic Policies That Contribute to the Vitality of Rural America

The first job of the national government must be to create the economic climate conducive to growth in the rural economy. Rural America has suffered greatly under economic policies which created or permitted: high inflation and interest rates; an overvalued dollar; unfair trade practices; and high energy prices.

There have been some beneficial effects over the last several years of low inflation, a more realistic dollar, and low energy prices. These gains should be preserved.

But the federal government must take a more aggressive stance on resolving inequities in international trade, which favor Canadian and EEC agricultural products over U.S. products. In addition, action must be taken to resolve third world debt problems which encourage Latin American nations to compete against our exports instead of consuming them.

Recommendation #2: Encourage Local Leadership Problem-Solving

It is clear that we cannot create a system that sends federal dollars in search of a local problem to solve. The initiative must be from local communities, who not only understand their problems better than distant bureaucrats, but also have a vital stake in their solution.

Federal rural development programs must encourage to the greatest degree possible reliance upon, or formation of if they do not exist, sub-state regional development authorities. These authorities should have three purposes: planning, technical assistance and liaison with the state and federal governments. State rural development corporations, which manage state problems and provide capital and information, should also be encouraged.

Specifically, these local and state development authorities should be encouraged by involving them in the process of application for and distribution of federal monies under the various programs of the EDA, SBA, FmHA, and other USDA programs.

Recommendation #3: Revitalize the Intergovernmental Partnership

The nineteen eighties have seen the federal government "devolving" a number of responsibilities to lower levels of government. At the same time the federal government has (1) not shared the resources needed to meet those responsibilities, (2) nor has it hesitated to load costly mandates on local government, which locals are then forced to comply with out of their own pockets. Rural communities cannot shoulder the burdens of both their own constituencies and Washington's.

The General Revenue Sharing program provided an essential relief to rural governments which ameliorated fiscal disparities between wealthy and struggling communities. The Congress, in eliminating GRS because of its inefficiency, threw the good out with the bad. First, we need to establish a form of targeted fiscal assistance. Second, we need to prevent the federal government from passing on mandates without the resources to pay for their execution.

Recommendation #4: Make Investments in Rural Quality of Life

Improving quality of life is a key element in maintaining the population base in rural areas. The federal government currently makes a range of investments in these areas, which are vital to rural revitalization. They must be properly targeted and funded to help provide rural citizens with the services they need.

Education: School districts and post-secondary institutions play a vital role in training and re-training the rural work force. Information technologies can give even remote schools accesses to resources available previously only to students in urban technical schools. Department of Education grant programs like the Star Schools Program help local areas obtain these information technologies, which opens the door to a wealth of educational opportunities.

Health: The availability of high quality health care is a necessity of rural life. In fact, access to health care is considered one of the most essential elements of any community. This is particularly important in

rural communities because of travel distances and the critical factor of time in emergencies, accidents and deliveries. In addition, farm and highway accidents are very serious problems in rural areas. As the health system throughout the country undergoes a revolution in financing, organization and medical practice patterns, the federal government has a special obligation to provide and protect rural health services. But many changes have hit rural hospitals, rural doctors and nurses and allied health personnel, and the elderly and disabled in a particularly unfair way.

For the past three years, I have been involved with efforts in Senate and Congress to correct the severe imbalance in payments from the federal Medicare system to rural hospitals and doctors, and to parts of the country (like Minnesota) which have had historically low health care costs. For example, Medicare payments to rural hospitals were increased 3% in the last budget bill, in constrast to 1% for urban areas and 1.5% for cities over a million people. Another front in this effort has been help for rural HMO problems and the rural nursing shortage. Soon these efforts will have a beneficial effect on delivery of health care in rural areas. Passage and funding of the Durenberger Rural Health Transition Grants program will give small community hospitals assistance to modify their service mix to better meet the needs of their communities. Dramatic increases in funding for nursing education and services will also help deal with the nursing crisis.

A federal solution to the long term health care problem is a very important issue in rural communities, which tend to have a high population of senior citizens. The recently enacted Catastrophic Protection Act will add protections against the impoverishment of wives or husbands if the spouse needs nursing home care. The bill also offers "respite" care to give a break to family caregivers, as well as expanded benefits in home health care, skilled nursing facilities, and hospice. Soon, there will also be an important new prescription drug benefit which will be especially helpful to the sick elderly with chronic conditions and costly, long term maintenance requirements.

Environment: Growing evidence of contamination of groundwater supplies on which virtually all rural citizens depend is a major potential problem for rural communities. Federal legislation to study and direct federal protection of groundwater should be a priority. Four bills which I have introduced (S. 1105, S. 1419, S. 2091, S. 2092) are designed to prepare the federal and state governments to assume a leadership role in protecting and providing restoration of this resource. These bills, which also provide a resource transfer from urban areas to rural water supply systems, need to be enacted before further costly damage is done.

Recommendation #5: Conduct Rural Impact Analysis of Policies

Whether in the formal sense of a Rural Impact Statement, or as an area of heightened sensitivity in policy-making, the rural impact of various government policy and budgetary decisions must become a more important factor in federal decision-making. This is particularly true in the areas of the deregulation of telecommunications services, financial institutions, and transportation. Federal tax and trade policies must reflect an understanding and a sensitivity to rural problems. And the federal government, as the largest purchaser of goods and service in the country, should use its procurement policies to make a larger contribution to the rural economy.

Recommendation #6: Meeting the Need for Rural Capital

Capital for business expansion and opening new businesses is in short supply in rural communities. Outstanding results have been accomplished around the country through revolving loan programs assisted by the federal government. Efforts by the Economic Development Administration to bring together private funds and public funds at various levels have been very successful and should be aggressively funded. The goal of capital assistance programs should be the use of federal seed money to create loan funds, which eventually are self-financing, rather than creating dependence on continuing federal loans.

III. ADDRESSING THE DROUGHT OF 1988

A. The nature of the needed Federal response

The most urgent need of the people and communities of the Upper Midwest in 1988 is assistance in meeting the challenge created by the drought conditions which began late last year and have become steadily more severe during the growing season.

The entire state of Minnesota is now rated very short of moisture. Small grain crops have been devastated, as have hay and forage, and without significant moisture, row crops of corn, soybeans, and sugar beets will also be severely affected.

But it would be a fundamental error to view the drought of 1988 only as a "farm problem." Helping farmers will not solve all the problems of the drought. This is a larger rural development problem. The federal challenge is to respond not only to farmers in need, but to rural businesses, governments, and social services, who are and will be experiencing a drought of sales and revenue while they have a flood of demand for services.

B. The budgetary impact of the drought

The federal budget for FY89 and FY90 was based on certain assumptions which have been changed radically by the drought of 1988. The effect of short supplies due to small harvests in the fall will be two-fold: 1) a large decrease in federal deficiency payments to farmers; and 2) a reduction in federal storage costs.

Deficiency payments are made to farmers according to the difference between the market price or loan rate, and target price levels. Here are the assumptions on which the federal government planned to make deficiency payments on corn and wheat totalling $12.1 billion over the next three years.

BUDGETARY SAVINGS FROM THE DROUGHT, 1988–90

[Estimated crop loss; in billions of dollars]

	Minor	Moderate	Major
Savings from lower deficiency payments on wheat and corn	4.70	5.5	8.3
Savings from lower CCC storage and handling	.5	.7	1.3
Savings from lower farm storage payments	.1	.2	1.25
Total Savings:	5.3	6.4	10.85

Minor = 50% loss of spring wheat/small grain, 15% corn.
Moderate = 60% loss of SW/SG, 25% corn.
Major = 80% loss of SW/SG, 50% corn.

At the beginning of FY88, the federal government maintained a storage inventory of over 4.1 billion bushels of corn, 1.3 billion bushels of wheat, and 6.2 billion pounds of milk products. The annual cost of maintaining this stockpile of farm products was budgeted to be $600 million.

With the potential for major crop losses, withdrawals from surplus have proceeded at an amazing rate. It is possible that by the end of this year, carry over stocks for wheat will be 250 million bushels, ad for corn will be 2 billion bushels. The combined cost savings to the federal government over the next three years could be as high as $10 billion.

So the total budgetary wind fall to the federal government for funds allocated which will not be spent could be $1 billion in the current fiscal year, $6 billion in FY89, and $3 billion in FY90.

C. Rural development fund

These resources should be placed in a drought relief/rural development fund. These funds need to remain in rural areas, directed to urgent relief and long term development projects. The objectives of this fund should be to meet the short term, mid term and long term needs of farm families, and to provide assistance to rural communities and businesses to help them recover from the negative impact the drought conditions had on them as well.

1. Drought relief priorities (for eligible producers only)

Short term: Prompt approval of county EFP and EFAP requests: Once a county ASCS has approved a request for emergency feed or other assistance, it must be approved by the state and then sent to Washington. Prompt approval means that USDA in Washington would make a decision within 24 hours.

Waive repayment of advance deficiency payments (S. 2526): Farmers who suffered severe losses would not have to pay back the $.61 cents per bushel on wheat or $.44 cents per bushel on corn which they received as advances on this year's deficiency payments at sign up and around May 16.

Allow harvest of oats on setaside acres: At this time, farmers may bale their oats. But, they may not combine oats, either to use the grain for feed or to sell it. This proposal would allow combining of oats for either feed or sale.

Purchase distressed livestock as it comes on the market—use for domestic feeding programs: This would encourage the Secretary of Agriculture to purchase livestock as it comes on the market from distressed farmers for government programs, reducing the amount of red meat on the market and helping to support prices.

Eliminate USDA's authority to cut dairy supports (S. 2559): Currently, the USDA is scheduled to make another fifty cent per hundred weight cut in dairy price supports this fall. This legislation would remove this authority.

Mid term: Guarantee deficiency payments on failed production: In counties which have been declared a disaster, farmers would get their final portion of this year's deficiency payments—about 92 cents per bushel for wheat and 66 cents for corn.

Allow producers to plant on 100% of 1988/1989 crop base—no setaside: Setaside requirements for participation in next year's farm program would be waived.

Assist producers of specialty and non-program crops.

Long term: Make FmHA Disaster Loans available to producers for the purpose of consolidating losses, purchasing livestock feed, and financing 1989 planting expenses.

Forego any reduction in 1989 target prices: Target prices would remain at $4.23 for wheat and $2.93 for corn, rather than be

reduced under provisions of the 1985 Farm Bill.

Restore income averaging for farmers (S. 1743): The provision in the 1986 Tax Reform Act eliminating income averaging for farmers would be repealed.

It is our strongest hope that adoption of these proposals, at both the legislative and administrative level, will provide the targeted relief farmers in Minnesota and elsewhere need to continue operations. The limited assistance called for here will enable livestock operations to maintain their herds, dairy producers to continue milking their cows, grain producers to plant cover crops on barren land and small businesses and communities to weather the lingering problems that historically follow natural disasters.

Without this assistance, we can expect to see thousands of Minnesota farms, hundreds of small town businesses and dozens of lenders thrown back into the downward cycle of financial insolvency which was so devastating in the early and mid eighties.

2. Rural economic development priorities

Assistance to rural businesses: Funding increases and drought-relating language changes in:

EDA revolving loan program grants: Grants are made to regional development commissions which loan them on a revolving basis to new or expanding businesses.

EDA Title IX "Sudden and Severe Economic Loans": Loans are made to businesses which have suffered from some sudden and severe economic change, in this case, the drought.

Rural Enterprise Zone Program (S.1743): This proposed legislation would authorize establishment of enterprise zones in economically depressed rural areas. Businesses that locate or expand in these areas would be eligible to receive federal tax breaks.

Farmers Home Administration Business and Industry Loan Program: Loans are made to smaller businesses in rural areas.

Farmers Home Administration Water and Waste Water grants and loans: Grants and loans are made to smaller rural cities for new or replacement water and sewer systems.

UDAG loans to rural communities: Grants are made to cities for projects which create jobs.

Assistance to rural governments: New programs and planning funds for drought stricken areas:

Targeted Fiscal Assistance (S.660): General purpose grants to cities, counties, and townships based on fiscal capacity and other indicators of need.

Tax exempt bonds for rural development (S.1864): Restoring access to tax exempt bonds to local governments which was reduced by the 1986 Tax Reform Act.

Regional development planning commission funding: Planning grants to regional development commissions from EDA.

The purpose of these program additions to provide an injection of funding in proven areas of benefit to rural communities, through both the public and private sectors. Each of these existing programs have an excellent track record in Minnesota and can make the most of limited federal dollars. The new program recommendations, the TFA, rural enterprise, and tax exempt bond programs have been studied and discussed over the last several years, and show promise as part of a long term national rural development agenda.

IV. CONCLUSION

Rural economic development as a federal policy has suffered because of the narrow way in which its problems have been defined. Approaches which equate "rural" with "farm" fail in the long run to meet the needs of either.

The rural economy is a complex system of basic industries, quality of life, and governance. Federal policy must appreciate that interconnection and provide integrated assistance to the related problems in those sectors.

The problems and opportunities of America's rural communities have become a matter of national interest over the last several years. As yet, however, that concern has not been translated into a coordinated national rural strategy. It is hoped that this preliminary report, and those that follow it will point us in the proper direction.

Rural communities have played an important part in the development of the United States. As producers of food, raw materials and resources, as well as values, leadership and spirit, rural communities have made a tremendous contribution. As America looks to its third century, those same materials and qualities will be just as important.

What is needed in federal policy is an understanding of rural America's problems, respect and support for its solutions, and a commitment to cooperate in the effort to provide tools for coping with change in rural America. If the national government can do that, we can help shape a bold, vital rural future, which will serve the best interests of all Americans.●

INFORMED CONSENT: OREGON

● Mr. HUMPHREY. Mr. President, women considering an abortion have a right to know the risks and alternatives to this serious operation. S. 272 and S. 273 require recipients of Federal funds to secure informed consent from their patients before performing such an abortion. I urge my colleagues to join me in support of this legislation. I ask that the following letter from Oregon be inserted in the RECORD.

The letter follows:

MARCH 1987.

DEAR SENATOR HUMPHREY: Like so many other women, I have been an ignorant accomplice to the terrible crime of prenatal murder. As a college student, I became involved with a young man and found myself pregnant. I went to the only place I knew that offered free pregnancy testing—Planned Parenthood. There, I was tested and told that for only $160.00 I could solve my "problem."

I knew little enough biology, and nothing about the reality of prenatal life, growth, and development. I was told nothing at the first visit except the cost and the speed of their "solution." An appointment was made for me, and when I arrived, I was hustled into a room full of women and shown a quick videotape of some "rare" complications. I was then examined by a nurse and subjected to a vacuum aspiration abortion. Miraculously, I suffered no physical complications, but have suffered much emotionally since I learned the truth about what I had done.

Please Senator Humphrey, spare others my pain.

Thank you,

PB IN OREGON.●

DROUGHT CONDITIONS IN TENNESSEE

● Mr. SASSER. Mr. President, I used the opportunity of the July Fourth recess to visit with farmers in my State to assess the impact of the ongoing drought. As many of my colleagues have experienced in their own States, what I saw and heard does not bode well for farmers.

On the several farms I visited, parched fields are expected to produce no more than 40 percent of their normal yields. As well, I was told that feed for beef and dairy cattle is beginning to run low.

In Rutherford County, many dairy farmers told me that they expect to begin selling their cows for slaughter rather than allowing them to starve. And in Haywood County, one of the largest agricultural counties in Tennessee, I saw fields of corn, cotton, and soybeans which will provide farmers with only a fraction of their normal income as production levels are severely reduced.

Let me give you an idea of what Tennesseans are facing, and I am sure that many of my colleagues will empathize with these problems:

The week of June 20 saw three areas in Tennessee, Nashville, Memphis, and Chattanooga, ranked as the first, second, and third driest cities in the Nation.

Many parts of Tennessee are 16 to 18 inches short of rainfall for the year.

Crop conditions are the worst some farmers can remember since droughts of the 1950's. Some crops are on the verge of total losses:

Corn, 86 percent of crops in poor or very poor condition; cotton, 29 percent of crops in poor or very poor condition; hay, 92 percent of crops in poor or very poor condition; soybeans, 62 percent of crops in poor or very poor condition; tobacco, 55 percent of crops in poor or very poor condition; and pastures, 97 percent of crops in poor or very poor condition.

In addition, not one county in the entire State has adequate soil moisture and 90 percent are very short.

The Mississippi River is running at one-third of its normal flow, severely impacting water supplies and barge traffic in west Tennessee. Memphis, TN, normally one of the deepest spots in the river, has seen barge after barge bottoming out in recent weeks.

While the Secretary of Agriculture has moved forward with some disaster assistance, farmers are still wondering what relief they can expect in both the short term and long term. I know the Congressional Agricultural Task Force is moving forward with efforts

to fully address the matter. It is my hope that the committee will have proposals ready for action before the end of July.

The suggestions of Tennessee's farmers on appropriate relief measures echo what we've heard across the country. For instance, Tennessee is in great need of feed assistance. With the institution of emergency feed programs in many counties in Tennessee and around the country, we need to ensure that Government held stocks are not only available to farmers, but also that an adequate transportation network is established. A significant portion of these costs should be covered under a disaster plan.

As market prices continue to climb toward target prices for program crops, the Department of Agriculture will note significant savings in deficiency payments, possibly as large as $2 billion. These savings should be invested into drought assistance measures, including allowing our farmers to retain their advance deficiency payments.

While program crops have a method of payments, the producers of soybeans and other nonprogram vegetable crops lack an established method for assistance. These farmers are in a situation where increased prices will mean a higher income; however, so many have already lost part or all of their crops and will not meet even an average production year. For these farmers, with significant crop loss, some type of direct assistance will be necessary.

As well, interest has been expressed by our farmers in planting late crops on set-aside acreage in areas where conditions have been the most extreme. Late summer rains could provide additional crops for some farmers and prevent such drastic losses. I would encourage the task force to look into this possibility.

Concern over the drought is a national issue. Tragically, weather forecasts do not indicate a great deal of improvement in these desperate conditions. While some say that we need to wait to determine the final severity of the drought, the farmers of Tennessee understand the peril they face now and that action needs to be taken. I encourage the agricultural task force to move forward expeditiously in addressing this national disaster. I am planning to tour more farm operations in my State this weekend, and I trust that the task force will be working with interested Senators in drafting measures to meet the specific needs of different areas of the country.●

ON-SITE ARMS CONTROL INSPECTIONS

● Mr. SIMON. Mr. President, I am one of many Senators who believe the United States ought to seek additional, verifiable arms control agreements with the Soviet Union. The INF Treaty was a step in the right direction. The deep cuts now under consideration in the strategic arms talks would bring about greater security for all of us.

There is another arms control problem that receives very little attention. That is the problem of chemical weapons proliferation. In 1984, before the Multilateral Conference on Disarmament in Geneva, the United States put forward a draft convention that would ban chemical weapons worldwide. Progress has been slow in coming, but a useful start has been made. I hope the next administration and the Soviet leadership have sufficient political will to move in this area.

Onsite inspection proved to be the most interesting aspect of the INF Treaty. Other agreements will undoubtedly require even more extensive and more intrusive onsite inspection. Yet some analysts have raised the specter of the U.S. Government negotiating a treaty that conflicts with our fourth amendment right to privacy. Private chemical firms, for example, could refuse to accede to an onsite inspection by an international organization, as now envisaged in the Chemical Weapons Draft Convention. How the courts would respond is an open question, according to some observers.

One of these observers is Edward A. Tanzman, an attorney at Argonne National Laboratory in Illinois, who has recently written an article in the Yale Journal of International Law entitled: "Constitutionality of Warrantless On-Site Arms Control Inspections in the United States." Mr. Tanzman proposes legislation as part of the remedy, and also advises that treaty negotiators take this problem into account to accommodate onsite inspections. I believe his ideas are worthy of further consideration.

I commend Mr. Tanzman's well-researched and thoughtful article to my colleagues, and I ask that his article be printed in the RECORD in full.

The article follows:

CONSTITUTIONALITY OF WARRANTLESS ON-SITE ARMS CONTROL INSPECTIONS IN THE UNITED STATES

(By Edward A. Tanzman†)

INTRODUCTION

The Reagan Administration considers verifiability of Soviet compliance to be an essential feature of any arms control agreement it would be willing to make with the Soviet Union.[1] While numerous methods of arms control verification exist,[2] on-site inspections might be a means of ensuring that all parties are strictly observing the provisions of an agreement.[3] As a result, Reagan Administration arms control negotiators have pressed the Soviets to agree to on-site inspections in several of the agreements under discussion.[4] In addition to the Soviet Union's historical opposition to on-site inspection, based in part upon fears of espionage,[5] the U.S. Constitution's limitations on governmental power are also potential obstacles to on-site inspection in this country. The purpose of this article is to examine the constitutionality of on-site inspections as contained in one of these agreements—the Draft Convention on the Prohibitions of Chemical Weapons (Draft Convention).[6]

The Draft Convention, presented by the United States to the multilateral Conference on Disarmament in Geneva, Switzerland, on April 18, 1984, is the most far-reaching Reagan Administration proposal for on-site inspection.[7] Sometimes called the "poor state's weapons of mass destruction," chemical weapons—already banned in wartime by the Geneva Protocol of 1925[8]—are considered by the Reagan Administration to be undergoing a resurgence in use that demands additional international regulation.[9]

In a 1984 speech to the Conference, Vice President George Bush pointed out that chemical weapons pose a basic dilemma for international negotiators:

"[T]hese insidious chemical weapons are virtually identical in appearance to ordinary weapons, plants for producing chemicals for weapons are difficult to distinguish from plants producing chemicals for industry and, in fact, some chemicals with peaceful utility are structurally similar to some chemicals that are used in warfare. So verification is particularly difficult with chemical weapons."[10]

The Vice President urged the Conference to agree to the American treaty proposal, which he characterized as containing "an entirely new concept for overcoming the great obstacle that has impeded progress in the past toward a full chemical weapons ban, namely, the obstacle of verification."[11] In the Vice President's words, this new American proposal would "open for international inspection on short notice all . . . military or government-owned or government-controlled facilities" of each party.[12] Acknowledging that "openness entails burdens for every State . . . including the United States of America,"[13] the Vice President asserted that on-site inspection is "the *sine qua non* of an effective chemical weapons ban."[14]

Verification is a concept that has become inextricably entwined with arms control. It is a shorthand term for all means by which a party to a treaty satisfies itself through objective evidence that other parties are, in fact, complying with treaty commitments.[15] Its origins lie both in skepticism that nations will observe the arms control treaties into which they enter and in fear of the military consequences of undiscovered cheating.[16] On-site inspection has historically been a very controversial means of verifying arms control treaties.[17] Verification of the major nuclear weapons treaties of the past has been accomplished without on-site inspection, mostly by such "national technical means" as surveillance satellites, remote seismic networks, radars, and electronic intercepts—devices typically based in the territory of the nation seeking to verify the treaty, or in orbit, in international waters, or on the soil of other nations.[18]

If on-site inspections is the *sine qua non* of a chemical weapons treaty today, advances in weapons technology and recent political developments[19] suggest that this may become true for some future nuclear weapons agreements as well. With the increasing accuracy of land-based strategic weapons,[20] enhancing Intercontinental Ballistic Missile (ICBM) survivability through

Footnotes at end of article.

concealment, description, active defense, increased missile mobility, or some combination of these measures has become more and more essential.[21] These improvements in mobility, concealment, and deception may create imperatives for future nuclear weapons treaties to include intrusive verification provisions similar to those in the Draft Convention. Indeed, the Reagan Administration's position on verification of nuclear weapons treaties explicitly recognizes that this trend will require methods of verification that go beyond national technical means.[22]

The recently concluded Intermediate Nuclear Forces (INF) agreement between the United States and the Soviet Union illustrates the Reagan Administration's view of this problem, as well as the trend toward on-site inspection as its solution.[23] Among the weapons that are included in this agreement are Soviet mobile SS-20's and American Ground-Launched Cruise Missiles and Pershing II's,[24] the concealability of which makes verification of the level of their development difficult.[25] During the period in the negotiations when the Soviet Union insisted that both sides be allowed to retain the capability to manufacture and deploy a limited number of missiles, then Defense Secretary Weinberger contended that on-site inspections of Soviet SS-20 factories would be "an absolute essential" in order to verify that the limits would be observed.[26] Even when the Soviets agreed to eliminate INF weapons altogether, thereby obviating the American problem of accurately tracking the number of SS-20's that would be manufactured, the United States still asserted that on-site inspections of a less intrusive nature would be required,[27] and they were included in the treaty.[28] In any event, the original American position on INF verification apparently is indicative of the present American position on the verification needs, including on-site inspection, of a Strategic Arms Reduction Treaty (START), as well.[29] Consequently, important lessons may be learned by reviewing those constitutional issues raised by the on-site inspection provisions of the Draft Convention that may also apply to nuclear weapons treaties.[30]

The importance of these issues has become apparent recently, since the Soviets have demonstrated an increasing willingness to discuss on-site arms control inspections under General Secretary Mikhail Gorbachev.[31] On August 6, 1987, the Soviet Foreign Minister stated in an address to the Geneva Conference on Disarmament that "the Soviet delegation at the negotiations on [a chemical weapons treaty] will proceed from the need to make legally binding the principle of mandatory challenge inspections without right of refusal."[32] General Secretary Gorbachev has proclaimed that "the Soviet Union has no objection to any verification procedures"[33] in the context of a treaty to eliminate all nuclear weapons. Indeed, in July 1986 the Soviets, as part of a pilot program to demonstrate the verifiability of a comprehensive nuclear weapons test ban,[34] allowed a private American environmental organization to place three seismic monitoring stations on Soviet territory in the vicinity of the country's largest nuclear test site. In September 1987 the Soviets invited a delegation of Western observers, including three members of the U.S. Congress, to tour and photograph a giant radar under construction near Krasnoyarsk that the Reagan Administration has asserted violates the Anti-Ballistic Missile Treaty.[35] One month later, the Soviets invited representatives of 45 nations, including the United States, to visit a chemical weapons production facility at Shikany and view an assortment of nineteen types of chemical weapons.[36]

This movement by the Soviets away from their historical opposition to on-site inspection is part of what one U.S. diplomat claims is a long-term maturing of Soviet attitudes toward negotiating in general.[37] If American constitutional law permits only relatively unintrusive on-site verification inspections, then perhaps an area of United States/Soviet agreement on the scope of on-site inspection can more easily be reached. This would not be the first time a confluence of interest had its source in contradictory values.[38]

The remainder of this article consists of four sections. The first section describes the on-site inspection provisions of the Draft Convention. The second section analyzes the Fourth Amendment issues raised by these provisions. The third section explores remote monitoring methods of arms control verification that may minimize Fourth Amendment problems, the feasibility of using the Spending Power to induce consent to on-site inspections by federal contractors, and a possible statutory solution. The last section presents the conclusions that this review suggests:

I. ON-SITE INSPECTION IN THE DRAFT CHEMICAL WEAPONS CONVENTION

The Reagan Administration has described the Draft Convention as a comprehensive ban on "the possession, production, acquisition, retention or transfer of chemical weapons."[39] If the Draft Convention were adopted, the possession of chemical weapons,[40] as well as the facilities that manufacture their raw materials,[41] would be strictly limited.[42] All parties would be required to declare and destroy existing chemical weapons stockpiles[43] and production facilities.[44]

A. The enforcement framework

The Draft Convention contemplates the creation of a specialized bureaucracy to enforce its provisions. A "Consultative Committee," made up of one representative from each party, would be established with the responsibility to "oversee the implementation of the Convention, promote the verification of compliance with the Convention, and carry out international consultations and cooperation among Parties to the Convention."[45] The Consultative Committee would delegate to an "Executive Council" the authority to make most day-to-day decisions.[46] The Executive Council would be made up of representatives of the Parties elected to two-year terms by the Consultative Committee, plus representatives of the five permanent members of the United Nations Security Council (China, France, the Soviet Union, the United Kingdom, and the United States) who become Parties to the treaty.[47]

Compliance with the Draft Convention would be reviewed by two subordinate bodies of the Consultative Committee: the "Fact-Finding Panel"[48] and the "Technical Secretariat."[49] The Fact-Finding Panel would consist of representatives of the United States, the Soviet Union, and three others elected by the Consultative Committee.[50] The Panel's major responsibility would be to respond to requests by a party for information, which would require reviewing available information, conducting necessary inquiries, and making "appropriate findings of fact,"[51] including "considering reports on special on-site inspections . . . and overseeing *ad hoc* inspections. . . ."[52]

The Technical Secretariat would consist of an administrative staff, including "technically qualified" inspectors,[53] that would carry out on-site inspections for the Fact-Finding Panel and provide other technical and administrative assistance.[54]

The Draft Convention would allow on-site inspections of various facilities located within the jurisdictions of signatories. Three types of on-site inspection would be permitted: systematic international on-site verification inspections, special on-site inspections, and ad hoc on-site inspections.[55] The remainder of this section will describe briefly each of these types of inspection.

B. Systematic international on-site verification inspections

Since the Draft Convention contemplates the destruction of most existing stocks of chemical weapons and the dismantling of the facilities that produce them,[56] it would require that so-called systematic international on-site vertification inspections be permitted at predetermined stages of this process. Thus, inspections of each party's declared chemical weapons inventory[57] and storage facilities[58] would take place before,[59] during,[60] and after[61] closure and destruction. In addition, the Draft Convention prescribes systematic international on-site inspections where activities occur that the treaty specifically would allow, such as the maintenance of certain limited chemical weapons[62] and permitted chemical weapons precursors.[63]

Although the Draft Convention does not specify in great detail the procedures for systematic international on-site inspections, it does give some parameters. Both persons and instruments would be allowed as part of the inspection procedure.[64] Inspections could include sampling of materials as well as examination of records.[65] The Draft Convention envisions random inspections[66] and inspections triggered by particular events.[67]

C. Special on-site inspections

Unlike systematic international on-site verification inspections, special on-site inspections pursuant to Article X of the Draft Convention ostensibly require justification by the party who requests them. The requesting party is only entitled to an inspection of the facilities of another party in order to "clarify and resolve any matter which may cause doubts about compliance or gives rise to concerns about a related matter which may be considered ambiguous. . . ."[68] Thus, some level of suspicion regarding compliance with the Draft Convention appears to be contemplated as a prerequisite to a special on-site inspection. However, the approval of only a single member of the Fact-Finding Panel[69] is necessary to trigger such an inspection. Since that Panel includes both the United States and the Soviet Union,[70] an objective review process for these requests cannot realistically be intended. In effect, special on-site inspections are to be available on demand.

Once a special on-site inspection has been initiated, the party being inspected must "provide the inspection team unimpeded access to the location or facility" within 24 hours of notification.[71] The inspection team is to consist of one person from each member State of the Fact-Finding Panel, except the State that is the subject of the inspection.[72] The results of the inspection are to be presented in a written report.[73]

Special on-site inspections would be considerably more intrusive than systematic international on-site verification inspections. Any party to the treaty would be em-

powered to request a special on-site inspection of any military or other "location or facility" owned by any other party.[74] In addition, the Draft Convention would open for special on-site inspections, "as set forth in Annex II, locations or facilities controlled by the Government of a Party."[75] Annex II, in turn, is vague regarding which installations are "controlled by the Government of a party," stating only that the treaty in its final form should include "the relevant facilities used for the provision of goods and services to the Government of a Party. It is intended that this provision reach any location or facility that in the future might be suspected of being used for activities in violation of this Convention. The specification of such locations and facilities should be a reasonable one."[76]

It is therefore not clear from the text of the Draft Convention whether or to what extent private firms in the United States would be subject to special on-site inspections.[77]

The political and legal importance of this ambiguity cannot be overestimated. At the time the United States proposed the Draft Convention in Geneva, the Soviet Union immediately protested that the document "is built on a blatantly discriminatory basis, and places States with different social systems in unequal situations"[78] because it would treat capitalist nations differently from socialist countries. The Soviet Ambassador to the Geneva Convention took the position that the proposed treaty language would not subject the private firms of capitalist nations to on-site inspections.[79] This prompted the United States Representative to the Conference on Disarmament to respond:

"The statement has been made that, since the [special on-site inspection] provision applies to government-owned or government-controlled facilities, it discriminates against some economic and political systems. The argument seems to be that, since the civilian chemical industries in some socialist countries are owned by the government, these facilities would be subject to article X, whereas the chemical industries in the United States or other western countries, since they are privately owned, would not be covered by article X. . . . Article X covers not only those locations and facilities that are owned by the government, but also those controlled by the government, whether through contract, other obligations, or regulatory requirements. The privately-owned chemical industries of the United States are so heavily regulated by the United States Government that this equates to the term *controlled* as used in the draft convention. Thus, the private chemical industry of the United States is fully subject to the inspection provisions of article X."[80]

Because the Soviet reaction strongly suggests that it will not enter into a chemical weapons treaty involving on-site verification inspections unless privately-owned firms in the West are subject to inspection to the same extent as government-owned firms in the Eastern bloc, and because the Reagan Administration has made on-site inspections a condition of American approval,[81] it will be assumed for the remainder of this analysis that all U.S. chemical companies—regardless of whether they actually produce weapons—and all privately-owned firms holding government contracts, are included in "locations or facilities controlled by the Government of a Party" and would be subject to special on-site inspections.[82]

In addition to questions regarding state and private ownership or control, problems of extraterritoriality also arise. It is unclear whether overseas subsidiaries of American chemical companies or government contractors would be included among those "controlled by the Government" within the meaning of the Draft Convention, and, hence, subject to special on-site inspections. The terms of the Draft Convention itself purport to be very far-reaching, not only prohibiting activities undertaken by a party in direct contravention of its terms, but also making it a violation to "assist, encourage, or induce, directly or indirectly, anyone to engage in activities prohibited to Parties under this Convention."[83] The underlying policy of the Draft Convention clearly is to obligate a party to abide by its terms in the broadest possible circumstances, but the terms of the proposal itself do not state whether it would apply beyond the territory of a party.

* * * * *

The Draft Convention embodies a very clear and emphatic set of policies requiring intrusive on-site verification inspections of any party. While the proposal was intended to be a preliminary draft subject to future negotiations, the Reagan Administration regards these policies as essential components of any future chemical weapons pact. Therefore, it is reasonable to assume the Draft Convention will become effective as proposed for purposes of an analysis of its constitutional implications in the United States.

II. THE FOURTH AMENDMENT AND ON-SITE INSPECTIONS UNDER THE DRAFT CONVENTION

The Draft Convention raises important constitutional questions because it would delegate on-site inspection responsibility—an investigative law enforcement function—to an international organization. Because the resolution by American courts of conflicts between treaties and the Bill of Rights has a sparse and checkered history,[98] it is impossible to predict with certainty how these problems would be viewed by the judiciary. In an attempt to raise and define the issues, this section will analyze the U.S. court decisions that appear to provide the most relevant precedents.

Should an inconsistency between the Draft Convention and the Constitution be argued before a court, the terms of the Draft Convention make clear that the Constitution controls. Article XII obligates each party, *inter alia*, to "take any measures necessary *in accordance with its constitutional processes* to implement this Convention . . ."[99] The real question is whether aspects of the Draft Convention are so inconsistent with the Constitution that this provision would have to be invoked—at potentially enormous political and jurisprudential cost.

A. Fourth amendment requirements

The key constitutional question raised by the Draft Convention is whether the Fourth Amendment forbids the on-site inspections that it contemplates. The Fourth Amendment states:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."[100]

If on-site inspections under the Draft Convention violate the Fourth Amendment, those subject to inspection might be able to obtain relief from a federal court to prevent such an inspection from taking place.

The formulation usually cited by the Supreme Court in its contemporary Fourth Amendment decisions[101] is Justice Harlan's concurring opinion in *Katz v. United States.*[102] Justice Harlan stated: "There is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'"[103] Where these requirements are met, the protections of the Fourth Amendment are triggered.[104]

The protections provided by the Fourth Amendment apply to businesses as well as to individuals in their homes. In *California v. Ciraolo,*[105] the Supreme Court affirmed that the inside of a home is the place "where privacy expectations are most heightened."[106] The Court has held it to be a "basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable."[107] The Court has also interpreted the Fourth Amendment to mean that "[t]he businessman, like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private commercial property."[108] Thus, inspections of commercial property pursuant to the Draft Convention must meet the standards that the Supreme Court has developed to determine the reasonableness of such official entries.

The Supreme Court has adopted the general rule that a valid search warrant is a necessary prerequisite to a constitutionally valid search.[109] The justification for this rule is that search warrants may only be issued by a magistrate, who interposes a neutral review process between the government agency seeking the inspection and its subject.[110] Central to this review process is the requirement that the government prove to the magistrate that "probable cause" exists.[111]

The primary Fourth Amendement problem created by the Draft Convention is that it does not provide explicitly for the procurement of search warrants prior to on-site inspections. The language of the Draft Convention is explicit regarding procedures for initiating an inspection, and offers no opportunity for the U.S. Government to obtain a search warrant from an American magistrate before the representatives of the Consultative Committee[112] would be entitled to carry out an inspection.[113] Perhaps the unstated policy behind this is the Reagan Administration's insistence that on-site inspections take place on "short notice"[114] and without interference by the party to be inspected. On-site inspections thus would have to qualify for an exemption from the Fourth Amendment's search warrant requirement.

The remainder of the section discusses how the on-site inspection provisions of the Draft Convention would stand up to a challenge alleging that a warrantless inspection pursuant to the Convention violates the Fourth Amendment. First, the outline of a hypothetical lawsuit to enjoin an on-site arms control inspection is considered, including whether plaintiff could satisfy the demands of standing and justiciability. Second, I address the question whether on-site inspections pursuant to arms control treaties are generally exempt from the Fourth Amendment warrant requirement because they involve foreign affairs. Third, assuming that the Fourth Amendment does require a warrant prior to an on-site inspection under the arms control treaty, I examine the principles underlying the exemp-

tions to the Fourth Amendment warrant requirement that are most likely to be asserted to justify the particular on-site inspections in the Draft Convention. Finally, I analyze each of the three types of onsite inspection contained in the Draft Convention using these principles to determine how a court might decide such a challenge.

B. Posture of a hypothetical suit to enjoin an on-site arms control inspection

In our hypothetical lawsuit, a private chemical manufacturer seeks an injunction to prevent an on-site inspection. The broad proposition that private plaintiffs could challenge the reasonableness of on-site arms control inspections in federal court[115] finds some support in Supreme Court precedent. If the courts would hear such suits, then plaintiffs who could prove that an on-site arms control inspection violated their Fourth Amendment rights could obtain either damages[116] or an injunction.[117] Before a federal court would reach the remedy issue, however, the plaintiff would have to clear preliminary hurldes posed by the doctrines of standing and justiciability.[118]

The Court recently summarized, in *Valley Forge Christian College v. Americans United for Separation of Church and State,*[119] its precedents on standing as requiring, "at an irreducible minimum," a plaintiff "to 'show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant,' . . . and that the injury 'fairly can be traced to the challenged action' and 'is likely to be redressed by a favorable decision.'"[120] A chemical manufacturer about to be inspected could allege that trade secrets or other confidential competitive information or processes to which the public is not permitted access might be compromised by the admission of foreign inspectors, and that this injury could only be prevented by enjoining the inspection. Such a claim would appear to meet the standing test set out in Valley Forge.[121]

The question of whether such a lawsuit would be justiciable is more difficult. The standard most often cited for determining what constitutes a non-justiciable political question is contained in *Baker v. Carr:*[122]

"Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and management standards for resolving it; or the impossibility of deciding without an initial policy determinination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due cooordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.[123]

Several of the considerations noted in *Baker* suggest that our hypothetical case could involve a nonjusticiable political question. Foreign affairs has traditionally been considered an area in which Executive Branch power is preeminent, in part because of the importance of the U.S. government speaking with a single voice in international matters.[124] It could be argued that merely hearing a claim to prevent the domestic enforcement of what the United States regards as an essential element of an arms control treaty could create "embarrassment"[125] for the President. Furthermore, the inspection provisions of a chemical weapons treaty would presumably have been debated in the Senate prior to ratification. A "political decision" that such inspections were in the national interest would thus "already [have been] made"[126] by the two branches charged with making and conducting foreign policy.[127] Such a decision, on the sensitive issue of arms control, might be thought to engender an "unusual need" for Judicial Branch deference.[128]

Other factors, however, suggest that our hypothetical case might be justiciable. The presence of a foreign affairs component in a lawsuit does not in itself require a court to invoke the political question doctrine in the face of a constitutional claim.[129] Such a case would allege a violation of private rights that could not be remedied under present law outside the judiciary. This was exactly the factor noted by the plurality in *Goldwater v. Carter* as distinguishing it from the kind of "dispute between coequal branches of government" that the four justices considered in that case to be non-justiciable.[130] Thus, the outcome of a motion to dismiss because of non-justiciability would be uncertain. It will be assumed for the remainder of this article that such a motion would be rejected. It would be unwise to ignore the Fourth Amendment issues inherent in the Draft Convention based on such an unpredictable doctrine.

C. Foreign affair exemption to the fourth amendment warrant requirement

It is possible that searches under treaties generally are exempt from Fourth Amendment challenges to the absence of a warrant. Some early legal theories, and even language in early Supreme Court decisions, suggest that the Bill of Rights itself does not apply to treaties.[131] Thus, before undertaking any analysis of how the Fourth Amendment warrant requirement applies to specific types of on-site arms control inspections under the Draft Convention, it is necessary to consider whether it would apply to arms control treaties at all.

The Supreme Court has explicitly avoided ruling on whether a "foreign affairs exemption" exists to the search warrant requirements of the Fourth Amendment.[132] Some lower courts, however, have analyzed this question in the context of searches of individuals. This subsection considers whether on-site inspections meet the tests these courts have used for exempting searches from the Fourth Amendment warrant requirement because they involve foreign affairs.

In *United States v. Truong Dinh Hung,*[133] the Court of Appeals for the Fourth Circuit faced the question of whether extensive warrantless bugging and wiretapping by the U.S. Federal Bureau of Investigation (FBI) violated the Fourth Amendment.[134] Truong Dinh Hung was suspected of transmitting classified documents to North Vietnamese diplomats during the Vietnam War. The court concluded that some, but not all, of the eavesdropping was constitutionally valid: "because of the need of the executive branch for flexibility, its practical experience, and its constitutional competence, the courts should not require the executive to secure a warrant each time it conducts foreign intelligence surveillance."[135] In trying to limit the situations where warrantless foreign intelligence searches are constitutionally justified—compromising individual privacy only where absolutely necessary—the court decided that "[t]he [foreign intelligence] exception applies only to [surveillance of] foreign powers, their agents, and their collaborators. Moreover, even these actors receive the protection of the warrant requirement if the government is primarily attempting to put together a criminal prosecution."[136] Thus, the court in *Truong* recognized a limited foreign affairs exemption focused on preventing or punishing espionage.

In *Zweibon* v. *Mitchell,*[137] the District of Columbia Circuit considered whether damages were owed to American citizens because their telephones had been extensively wiretapped without a warrant by the FBI. The purpose of the surveillance was to obtain advance knowledge of both peaceful demonstrations and violent attacks aimed at Soviet offices in New York City.[138] In a lengthy plurality opinion, the court rejected the arguments advanced by the Attorney General for a foreign affairs exemption to the Fourth Amendment warrant requirement.[139] Although acknowledging that its decision turned on the basic question of "whether a warrant requirement will better protect Fourth Amendment rights when foreign intelligence gathering is involved, and whether such a requirement would unduly fetter the legitimate functioning of the Government,"[140] the court decided that the government's arguments "do not suggest that the warrant procedure would actually fetter the legitimate intelligence gathering functions of the Executive Branch."[141] In rejecting the warrant exemption in this case, the court stressed that the Americans whose telephones were tapped were not connected with the foreign government. The plurality opinion emphasized that "[i]t would indeed be anomalous to allow the Government to engage in warrantless surreptitious surveillance of activity, which would otherwise remain private and protected, merely because another government is antagonized by such activity."[142]

Because on-site inspections under an arms control treaty would share elements crucial to the reasoning in both *Truong* and *Zweibon*, it is difficult to predict whether a court would hold such searches exempt from the warrant requirement of the Fourth Amendment. It could be argued that, like the foreign intelligence surveillance at issue in *Truong*, on-site inspections can only be controlled as a practical matter by the Executive Branch because of their international sensitivity. Indeed, it may well be that a treaty incorporating on-site inspections would be breached in the view of other signatories if a proposed inspection in the United States required pre-inspection review in an American court to determine whether a warrant would issue. Since termination of such a treaty under these hypothetical circumstances would close the door to reciprocal inspections by the United States of the other signatories, even a court following *Zweibon* might have to recognize that this would fetter the ability of the Executive Branch to gather intelligence about the activities of those foreign governments.[143]

On the other hand, the court in *Truong* only contemplated a foreign affairs exemption that embraced people suspected of conspiring with foreign governments. On-site inspections pursuant to arms control treaties are premised on the concern that the subjects of those inspections might be acting secretly in concert with their own governments, and against the interests of the foreign government seeking an inspection—the opposite of what is normally considered to be espionage. Those few cases that discuss a possible foreign affairs ex-

emption to the Fourth Amendment are thus easily distinguished on their facts from our hypothetical. Therefore, it cannot be assumed that a court would refuse to enjoin a warrantless on-site arms control inspection because it involves foreign affairs.

D. "Pervasively regulated industries" exemption to the fourth amendment warrant requirement

Assuming that the Fourth Amendment warrant requirement does apply generally to on-site inspection by foreigners pursuant to an arms control treaty, it is possible that an independent exemption might exist based on the nature of the subjects of the inspection.[144] Perhaps because the Court has not interpreted the Fourth Amendment to protect commercial property from government searches to the same extent as private homes,[145] the Court has found the constitutional leeway to create an exemption from the Fourth Amendment warrant requirement where the firm being searched is "pervasively regulated."[146] Since the Reagan Administration appears to base its assertion that private American chemical companies could be inspected under the Draft Convention on the fact that the chemical industry is "heavily regulated,"[147] it is fair to assume that the federal government would seek to justify all three types of inspections by asserting that the firms are pervasively regulated in the constitutional sense.

United States v. Biswell[148] illustrates that the pervasively regulated industries exemption is best viewed as the result of an implied social bargain.[149] In *Biswell,* a pawn shop dealer who was licensed to sell sporting weapons under the Gun Control Act of 1968[150] was convicted of the illegal possession of two sawed-off rifles. The weapons were discovered by a Treasury Department agent during a surprise warrantless inspection which was specifically authorized by the Act.[151] The Court upheld the constitutionality of the conviction, stating that "close scrutiny of [firearms] traffic is undeniably of central importance to federal efforts to prevent violent crime . . . and inspection is a crucial part of the regulatory scheme. . . . It is also plain that inspections for compliance with the Gun Control Act pose only limited threats to the dealer's justifiable expectations of privacy. When a dealer chooses to engage in this pervasively regulated business and to accept a federal license, he does so with the knowledge that his business records, firearms, and ammunition will be subject to effective inspection."[152]

The Court analyzed Biswell's reasonable expectations of privacy as though he had entered into an agreement with the government when he obtained his federal license to sell guns. In return for the license, the Court found that he had implicitly acceded to a greater level of government intrusion than an unregulated line of business might involve. When the Court balanced these limited privacy expectations against the great value of warrantless searches in uncovering violations of the law, it had "little difficulty" determining that the intrusion was constitutional despite the absence of a warrant.[153]

In *Marshall* v. *Barlow's, Inc,*[154] the Supreme Court further developed this social bargain theory by attempting to establish the point at which a business becomes a party to the imputed agreement. The Court faced the question whether the scheme of random warrantless administrative inspections created by the Occupational Safety and Health Act of 1970 (OSHA) satisfied the Fourth Amendment. On one extreme, the Court noted, are businesses like firearms dealerships, where the proprietor has "voluntarily chosen to subject himself to a full arsenal of governmental regulation."[155] At the other end of the spectrum are those where the proprietor is "not engaged in any regulated or licensed business."[156] Determination of where OSHA-regulated businesses fall on this regulatory continuum required the Court to scrutinize "the degree of federal involvement in employee working circumstances."[157]

The Court noted that OSHA reached beyond pervasively regulated businesses, like those contemplated in *Biswell,* to include "all businesses in interstate commerce."[158] It concluded that none "but the most fictional sense of voluntary consent to later searches [can] be found in the single fact that one conducts a business affecting interstate commerce; under current practice and law, few businesses can be conducted without having some effect on interstate commerce."[159] The Court thus made clear that the nature of the business the government seeks to subject to a warrantless search must be such that its owner has, in effect, consented to such searches as a sort of regulatory cost of doing business.

The government argued that regulation of employee health and safety in all businesses operating in interstate commerce was pervasive because those firms with federal government contracts were already required, under the Walsh-Healy Act of 1936, to comply with restrictions involving a minimum wage and maximum employee work hours. The Court rejected this argument. Comparing the relatively short reach of the Walsh-Healy Act to the expansion in "specificity and pervasiveness that OSHA mandates," the Court concluded that the older statute had not "prepared the entirety of American interstate commerce for regulation of working conditions to the minutest detail."[160] In short, the Court decided that federal regulation for limited purposes—minimum wage and maximum hours—does not amount to pervasive regulation for the broader purpose of dispensing with search warrants prior to OSHA inspections. Not all regulation is pervasive regulation.

In *Donovan v. Dewey,*[161] the Court elaborated on the obligations of the federal government under the fictional social bargain it had created to justify warrantless searches of commercial property. The statute at issue in *Dewey,* the Mine Safety and Health Act of 1977,[162] provided for warrantless safety inspections of underground and surface mines.[163] The plaintiff Secretary of Labor had appealed the denial of an injunction to prevent the president of a quarrying company from refusing to admit the Department's mine inspector.[164]

The Court reaffirmed that statutory inspection schemes could make warrants unnecessary in limited circumstances.[165] At the same time, the Court warned that "warrantless inspections of commercial property may be constitutionally objectionable if their occurrence is so random, infrequent, or unpredictable that the owner, for all practical purposes, has no real expectation that his property will from time to time be inspected by government officials."[166] The Court noted that its prior decisions "make clear that a warrant may not be constitutionally required when Congress has reasonably determined that warrantless searches are necessary to further a regulatory scheme and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes."[167]

The "certainty and regularity"[168] of the inspection program, combined with the "notorious history of serious accidents and unhealthful working conditions"[169] in the mining industry, tipped the balance between the mine operators' privacy expectations and the enforcement needs of the statute in favor of the latter.[170]

The Court considered three factors in deciding that the inspection program was sufficiently well-defined. First, inspections were conducted of all, rather than only some, of the subjects of the statute, and their frequency was specified in the statute.[171] Second, the statute contained specific compliance requirements that were provided to each mine operator.[172] Finally, a mine operator could deny entry to an inspector; the inspector then had to obtain an injunction in federal court against future refusals.[173] In concluding that "the Act establishes a predictable and guided federal regulatory presence,"[174] the Court set the standard for determining when warrantless searches of commercial property satisfy the Fourth Amendment's pervasively regulated industries exemption.

E. Analysis of the constitutionality of on-site inspections under the Draft Convention

Both the subjects and the breadth of inspections under the Draft Convention would differ among systematic international on-site inspections, special on-site inspections, and ad hoc on-site inspections. An application of the criteria developed by the Supreme Court to determine whether these warrantless searches would survive a Fourth Amendment challenge requires separate consideration of each type of inspection.

1. Systematic International On-Site Verification Inspections

Viewed through the lens of *Biswell* and *Dewey,* systematic international on-site verification inspections—even though warrantless—appear to comply with the Court's interpretation of the Fourth Amendment. Systematic international on-site inspections would take place at facilities and locations that have declared production and storage of chemical weapons.[175] If they are privately owned, these entities, like those in *Biswell,* surely are on notice that they have entered a business that is heavily controlled by the federal government, and in which an urgent public interest demands in return a high level of governmental intrusion. Moreover, like the inspection scheme approved in *Dewey,* the Draft Convention gives very specific parameters regulating most of the occasions on which these kinds of inspections would take place. Although the Draft Convention also permits some random inspections of such firms, *Biswell* suggests that even surprise inspections of weapons manufacturers would not violate the Fourth Amendment. Finally, like the regulatory schemes in both *Biswell* and *Dewey,* the systematic international on-site verification scheme clearly would be central to the success of the treaty.[176]

2. Special On-Site Inspections

If, as is assumed above,[177] special on-site inspections apply to all U.S. chemical companies, regardless of whether they actually produce weapons, and all privately owned firms holding government contracts, the constitutionality of special on-site inspections is more questionable than that of sys-

tematic international on-site inspections. The Supreme Court decision in *Dow Chemical Co. v. United States*[178] indicates that the chemical industry may not be, as claimed by the Reagan Administration, as pervasively regulated as the gun and mining industries were found to be in *Biswell* and *Dewey*. Furthermore, searches that would take place under this provision are far less certain and regular than systematic international on-site inspections. Consequently, it is more likely that a warrant would be found to be a constitutional prerequisite to this type of search.[179]

The *Dow* case arose out of an investigation of the plaintiff chemical manufacturer by the U.S. Environmental Protection Agency (EPA). The EPA sought to determine whether the firm's power houses were emitting excessive air pollutants.[180] Acting without a warrant, the EPA hired an aerial photographer equipped with a $22,000 precision aerial mapping camera to take pictures of Dow's premises. When Dow learned of the overflight, it brought suit against the EPA, seeking to enjoin the agency from "disseminating, releasing or copying the photographs already taken."[181]

The Court held that the overflight was not a search and a warrant was therefore unnecessary.[182] The opinion, however, reviewed the constitutional standards for warrantless searches of commercial property and concluded: "Dow plainly has a reasonable, legitimate, and objective expectation of privacy within the interior of its covered buildings, and it is equally clear that that expectation is one society is prepared to observe."[183]

While the Court was referring to a single litigant in a dispute over a domestic environmental statute—and not the entire chemical industry in the context of a major arms control treaty—this language directly contradicts the position of the U.S. Representative to the Conference on Disarmament that the chemical industry is so extensively regulated that it should be considered "government controlled."[184] To the extent that special on-site inspections permit warrantless entries *into* chemical manufacturing plants that are otherwise uninvolved in the chemical weapons industry, *Dow* suggests that they would be unconstitutional.

Even if the language quoted above from *Dow* is discounted as dictum, the pervasive regulation exemption to the warrant requirement may require expansion to encompass special on-site inspections. In both *Biswell* and *Dewey*, the pervasive regulation justifying warrantless searches was of activities directly in the line of business of the firms being inspected, and was created in the federal statute authorizing such inspections as a response to the nature of those activities. In contrast, the pervasive regulation that is asserted to support warrantless special on-site inspections is said to exist already, by virtue of other, presumably unrelated, federal laws.[185]

But since many chemical factories, such as pesticide or fertilizer producers, have no connection to chemical weapons manufacturing, they might not be considered to be on notice for constitutional purposes of on-site inspection for chemical weapons involvement. The Court in *Barlow's* did not decide whether pervasive regulation in one area would justify warrantless inspections for other purposes. However, its refusal to premise a determination that all employers in interstate commerce are pervasively regulated on a federal regulatory statute that, on its face, affected only government contractors strongly implies that pervasive regulation in one area does not necessarily amount to pervasive regulation for all possible governmental purposes. Therefore, a reviewing court would have to decide whether the exemption requires some nexus between the policy goals of the pervasive regulation and those said to justify the warrantless inspections.

Even if some or all of the chemical industry were found to be pervasively regulated, the almost complete absence of parameters in the Draft Convention governing the conduct of warrantless searches might be constitutionally fatal. Unlike the regularly scheduled safety inspections that the Court approved in *Dewey*, special on-site inspections may be as frequent or infrequent as the needs of the individual members of the Fact-Finding Panel require. Moreover, the Draft Convention does not give the subjects of those inspections any right to refuse entry; the easy access to federal court which the statute in *Dewey* provided[186] would be unavailable. Special on-site inspections thus appear to suffer from being potentially "so random, infrequent, or unpredictable"[187] that the federal government would be unable to live up to its obligations under the implied social bargain that the Supreme Court has constructed to justify warrantless searches of pervasively regulated businesses.

3. Ad Hoc On-Site Inspections

If special on-site inspections are of dubious constitutionality, ad hoc on-site inspections are surely constitutionally deficient. The best argument for the constitutionality of ad hoc on-site inspections is that they are not really warrantless searches at all because the Fact-Finding Panel must approve a party's demand prior to such a search.[188] It could be asserted that this process provides an effective substitute for a neutral review of proposed searches as contemplated by the Fourth Amendment.[189] In any case, the U.S. representative could always veto an unreasonable inspection.[190]

Supreme Court precedent concerning the separation of powers, however, provides little support for the proposition that an international organization could sufficiently simulate the constitutional protections afforded Americans by the federal judiciary. As early as 1803, the Court declared in *Marbury v. Madison*:

"Where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems . . . clear that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy. . . . It is emphatically the province and duty of the judicial department to say what the law is."[191]

As recently as 1974, the Court added, in *United States v. Nixon*:

"Notwithstanding the deference each branch must accord the others, the 'judicial power of the United States' vested in the federal courts by Art. III, §1, of the Constitution can no more be shared with the Executive Branch than the Chief Executive, for example, can share with the Judiciary the veto power, or the Congress share with the Judiciary the power to override a Presidential veto. Any other conclusion would be contrary to the basic concept of separation of powers and the checks and balances that flow from the scheme of a tripartite government."[192]

A Court that is unwilling to permit decisions interpreting the U.S. Constitution to be made by other branches of our own government seems unlikely to allow that power to be delegated to an international Fact-Finding Panel, whose only American representative would presumably be a diplomat serving at the pleasure of the President.[193]

Even if an international organization could be empowered to evaluate the reasonableness of on-site arms control inspections under the U.S. Constitution, the review process contemplated for ad hoc on-site inspections in the proposed Chemical Weapons Treaty would probably be inadequate. Most important, although the U.S. representative could exercise veto power over any proposed inspection, the Fact-Finding Panel on which the representative serves would be constituted as part of a law enforcement agency with a mission to "promote the verification of compliance with the Convention."[194] This would create in the U.S. representative exactly the same kind of conflict of interest that the Supreme Court has recognized as leading to bias on the part of domestic police in favor of searches.[195] In *Katz* v. *United States*,[196] the Court noted: "the Constitution requires 'that the deliberate, impartial judgment of a judicial officer . . . be interposed between the citizen and the police. . . .' 'Over and over again this Court has emphasized that the mandate of the [Fourth] Amendment requires adherence to judicial processes,' and that searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions."[197]

The Fact-Finding Panel could not be expected to offer the type of protection against unreasonable searches provided by a court.

If review by the Fact-Finding Panel is not an effective substitute for a warrant, then ad hoc on-site inspections suffer deficiencies similar to those discussed above surrounding special on-site inspections. Because ad hoc on-site inspections would apply to all "locations or facilities" not covered by special on-site inspections, the subjects of ad hoc on-site inspections would not be entities manufacturing or storing chemical weapons,[198] nor would they be under government control. Surely such enterprises could not be on notice that being *uninvolved* in the chemical weapons industry makes them fair game for warrantless searches to assure U.S. compliance with a chemical weapons treaty. Finally, even if a court were somehow to find that the firms to be inspected under this provision are pervasively regulated, ad hoc on-site inspections are no more certain or regular than are special on-site inspections.[199] Such searches would stand an even slimmer chance of surviving constitutional scrutiny where the contemplated search is of a "location or facility" that is not commercial property.[200]

III. MINIMIZING POTENTIAL FOURTH AMENDMENT CONFLICTS

The preceding section establishes that under existing law, systematic international on-site verification inspections are probably compatible with the Fourth Amendment. The constitutionality of special on-site inspections is uncertain, however, and it is unlikely that an ad hoc on-site inspection of certain facilities apparently covered by the Draft Convention would survive a Fourth Amendment challenge. If a U.S. court enjoined the inspection process after the treaty had been ratified, the international consequences could be significant. It is therefore appropriate to analyze whether more constrained methods of arms control

verification would be more likely to clear the Fourth Amendment hurdle, as well as whether government contracts or statutes could be changed to avoid conflict between the right to be free from warrantless searches and the national interest in mutually verifiable arms control agreements.[201] This analysis could assist verification not only of a chemical weapons treaty, but of agreements limiting nuclear and conventional weapons as well.

A. Remote monitoring as an alternative to on-site inspections

In *Dow Chemical Co. v. United States*[202] the Court held that "the taking of aerial photographs of an industrial plant complex from navigable airspace is not a search prohibited by the Fourth Amendment."[203] The Court thus opened the door to verification methods that are not searches under the Fourth Amendment—methods that would not even raise the question of whether warrants are needed.

The question in *Dow* was whether the company's outdoor plant site was entitled to Fourth Amendment protection from government surveillance using professional aerial photography equipment.[204] Characterizing the dispute as line-drawing between the outdoor areas that are entitled to "much the same kind of privacy as that covering the interior of a structure" and those that are "open fields" which "do not provide the setting for those intimate activities that the [Fourth] Amendment is intended to shelter from governmental interference or surveillance,"[205] the Court emphasized that "[w]hat is observable by the public is observable without a warrant, by a Government inspector as well."[206] Noting the large size of Dow's site, the firm's failure to shield its structures from aerial viewing, and the fact that the photographs were taken from public airspace where any airplane traveler could have viewed the facility, the Court was not persuaded by the company's assertion of a privacy interest.[207]

The Court also devoted considerable discussion to the degree of technological sophistication of the airplane's photographic equipment:

"Highly sophisticated surveillance equipment not generally available to the public, such as satellite technology, might be constitutionally proscribed absent a warrant. But the photographs here are not so revealing of intimate details as to raise constitutional concerns. Although they undoubtedly give EPA more detailed information than naked-eye views, they remain limited to an outline of the facility's buildings and equipment. The mere fact that human vision is enhanced somewhat, at least to the degree here, does not give rise to constitutional problems."[208]

Thus it appears that the Court has indicated that it will not require search warrants under the Fourth Amendment where government aerial photographers are located in public airspace, the facility is open to public view, and the photographs taken lack a high degree of detail.

It seems apparent from this decision that any area to which the public generally has access would be a constitutionally appropriate place to locate remote sensing devices. Under this test, a satellite would arguably be an acceptable place from which to conduct arms control verification. While it is true that the opinion in *Dow* singled out satellite technology as a government surveillance technique that might be viewed as a search within the meaning of the Fourth Amendment, one can imagine future public access to orbital space comparable to that available today to airplane travelers. More important, the Court in *Dow* appears to have been more concerned about the intrusive sensing devices than can secretly be carried on board satellites than with the location of the satellites themselves.

The opinion establishes a standard by which to evaluate whether a given sensing device is sufficiently intrusive so that its operation would amount to a search under the Fourth Amendment. In comparing the operation of the aerial camera in *Dow* to the human eye, the Court identified human senses as the benchmark for making this determination. The Court was willing to tolerate a sensing device that would provide substantial enhancement of human vision,[209] although it indicated that it would review future cases in terms of how far beyond ordinary perceptual abilities the sensing device in question extended. Since machines presumably can be designed to be incapable of picking up the breadth of information that a human being can extract from a given situation, this approach may permit relatively powerful remote monitoring devices to survey commercial property without crossing the Fourth Amendment threshold.

Yet the opinion in *Dow* seems anomalous in equating "highly sophisticated surveillance equipment not generally available to the public"[210] to devices that would intrude on a reasonable expectation of privacy. The intrusiveness of mechanical devices can be thought of as being comprised of two elements; sensitivity and selectivity. Sensitivity is "the ability of the output of a device or system to respond to an input stimulus."[211] Selectivity, in this context, is the ability to receive some signals while rejecting others.[212] A device that is sensitive but not selective is generally more intrusive than one that is both sensitive and selective because the unselective device will detect a wider range of data than its selective counterpart. For example, a microphone that picks up a broad spectrum of sound (i.e., is relatively unselective at a given decibel level) is more intrusive than one which only picks up high-frequency sounds (i.e., is relatively selective).

Devices that closely emulate the human senses may be more intrusive than those that are more selective, even if the more selective devices also are more sensitive. This is because a device designed so that it selectively detects only evidence of a violation of the law could not gather the breadth of wholly irrelevant data that a more human-like instrument could collect from the same scene. Since Supreme Court precedent implies that no reasonable expectation of privacy inheres in evidence of illegal conduct,[213] a perfectly selective device could be constitutionally unintrusive, where an unselective device resembling human senses would invade privacy. For example, if one can imagine a machine with the ability to detect and measure from an airplane in very small concentrations the extent of the supposed air pollutants that the EPA sought to locate in *Dow*—and only those pollutants—Dow Chemical Company would have had a less compelling claim that the data thus gathered compromised its privacy than it had regarding the photographs in issue in the case. The photographs depicted the air pollution plumes at the factory site similarly to the way a person with especially good eyes would see them from an airplane, along with all kinds of information pertaining to trade secrets. Our hypothetical air pollution detector, in contrast, would only have revealed data on one aspect of the operations (albeit in more detail), in which a reasonable expectation of privacy would be much more difficult to contrive. Thus, instruments designed to be more selective than the equivalent human senses might pose less of a threat to Fourth Amendment values.[214]

However, such selective devices may be both more sophisticated and less available to the public. Not only can selectivity sometimes be an expensive and difficult attribute to produce, but this characteristic may limit the size of the economic market for its use. Thus, few people may come into contact with such advanced devices, but, contrary to *Dow*, they may be less intrusive than unselective and more commonly available counterparts. A more precise formulation of what the Court in *Dow* seems to have intended would take account of the fact that technical sophistication does not always amount to intrusiveness.

Dow creates the possibility that using remote monitoring instruments to verify arms control treaties may pass constitutional review where on-site inspections could not.[215] Since the major Soviet objection to on-site inspections has been fear that such visits would be used for intelligence gathering, selective remote monitoring devices may be greeted with a great deal less trepidation.[216] These devices could pave the way for an internationally acceptable means of treaty verification by allaying Soviet fears of espionage as well as complying with Fourth Amendment restrictions against government intrusion.

B. Contractual consent to special on-site inspections

While federal government contractors are a small subset of the firms that would be subject to special on-site inspections under Article X of the Draft Convention,[217] modifying the treaty proposal to include only federal contractors might avoid the problem of relying on the "pervasive regulation" exemption to justify some of the contemplated warrantless on-site inspections. It is possible that contractors could be explicitly required to consent to such searches under the terms of any contract they enter into with the federal government. This subsection will analyze whether the Constitution erects a barrier to requiring such consent as a condition of contracting with the government, as well as whether a court is likely to find consent in existing government contracts.

In *Zap* v. *United States*,[218] the Supreme Court decided that a government contractor could waive its Fourth Amendment right to protection from warrantless searches. The petitioner's contract with the U.S. Navy included a clause permitting the government to inspect his accounts and records. When government agents subsequently began a warrantless audit of his records, Zap protested the search.[219] These records were crucial to the government's case against him for presenting false claims,[220] and Zap moved to suppress the evidence the warrantless search provided. Holding that the search was valid, the Court stated: "[W]hen petitioner, in order to obtain the government's business, specifically agreed to permit inspection of his accounts and records, he voluntarily waived such claim to privacy which he otherwise might have had as respects business documents related to those contracts."[221] The Court thus looked on the terms of the contract to determine whether the contractor had consented to

the warrantless search, and did not even require that the waiver of Fourth Amendment rights be explicit.

Furthermore, the federal government can demand commitment to a contract clause that is itself unrelated to the goods or services being provided under the contract. *Fullilove v. Klutznick*[222] tested the contitutionality of a federal statute requiring that a percentage of all government funds for public works construction projects be awarded to minority business enterprises. The decision stressed:

"Congress has frequently employed the Spending Power to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives. This Court has repeatedly upheld against constitutional challenge the use of this technique to induce governments and private parties to cooperate voluntarily with federal policy."[223]

The Court concluded that the goal of expanding minority access to federal funds in this manner is a valid exercise of the Congressional Spending Power because Congress is empowered to regulate minority subcontracting by private government contractors directly, even without resort to a contract clause.[224]

Requiring waiver of Fourth Amendement protections against warrantless on-site verification inspections as a condition of contracting with the government would go beyond the kind of contract clause approved in either *Zap* or *Fullilove*. First, it would be a contract term unrelated to the performance of the contract itself, thus requiring a court to extend the holding in *Zap* to embrace searches beyond the scope of the "business documents related to those contracts."[225] Second, it would require the waiver of a constitutional right, a situation which *Fullilove* did not present. Indeed, it might be argued that *Fullilove* is distinguishable because Congress might not be empowered directly to legislate the warrantless inspection of government contractors, as it could the racial subcontracting practices of public works contractors. Whether the Court would be prepared to combine the holdings in *Zap* and *Fullilove* to approve warrantless special on-site inspections of government contractors remains to be seen.

Snepp v. United States[226] suggests that the national security implications of an arms control treaty might bridge this gap. In *Snepp*, the Court faced a dispute between the U.S. Central Intelligence Agency (CIA) and former agent Snepp. After resigning his position, Snepp wrote a book about the CIA which he refused to submit to the CIA for prepublication review as required by his employment contract.[227] The Court held that the damages due to the CIA for breach of the contract should include the profits from the sale of the book,[228] and reaffirmed the Court of Appeals finding that the contract was valid even though it restricted his First Amendment right to free speech.[229] The Court noted the government's "compelling interest in protecting both the secrecy of information important to our national security and the appearance of confidentiality so essential to the effective operation of our foreign intelligence service," and found that "the agreement that Snepp signed is a reasonable means for protecting this vital interest."[230]

Requiring consent to warrantless special on-site inspections as a condition of contracting with the government has a much more tenuous relationship to most government purchases than the relationship between the condition in Snepp's contract and his employment. It can be inferred from this decision, however, that the national security interest in arms control would be a powerful argument in favor of the constitutionality of such contractual conditions. This analysis suggests that a consent clause could probably be constitutionally included in government contracts.

Assuming that some kind of clause consenting to special on-site inspections can constitutionally be included in government contracts, it seems unlikely that the government could rely on the inspection clauses in existing contracts. A similar problem was at issue in *Bowsher v. Merck & Co., Inc.*[231] In *Bowsher*, the U.S. General Accounting Office (GAO) sought access to confidential cost records of a pharmaceutical firm which sold goods to the federal government under a contract containing statutorily-required clauses "granting the Comptroller General the right to examine any directly pertinent records involving transactions relating to the contract."[232] The Supreme Court upheld the plaintiff pharmaceutical firm's refusal to grant the requested access because the records contained "indirect costs" such as research and development expenses. These expenses were deemed to be separate from costs related to the particular contracts.[233] The opinion noted that the purpose of the statute requiring the inclusion of the contract clause in question was "to assess the reasonableness of the prices paid by the Government and to detect inefficiency and wastefulness."[234] The Court concluded that in enacting this law, "Congress was apparently willing to forgo the benefits that might be gained from permitting the GAO broad access to the contractor's business records in order to protect those contractors from far-reaching government scrutiny of their nongovernmental affairs."[235] If the Court was not persuaded to interpret the statute in question to allow a U.S. agency—which was empowered to look at the records of direct costs attributable to the government contracts at issue—to examine indirect cost records, it is unlikely that the Court would interpret analogous government contracts[236] to allow the agent of an international organization the kind of free reign contemplated by special on-site inspections in the Draft Convention. It is therefore prudent to assume that a clause expressly granting such consent would be required.

C. Minimizing fourth amendment problems by statute

If remote means of treaty verification cannot be found that eliminate the need for intrusive on-site inspections, and a need is found to inspect firms other than those that would consent to warrantless searches in order to do business with the federal government, an alternative means of minimizing the possibility of a wrenching constitutional challenge might be through new federal legislation limiting remedies for Fourth Amendment violations so as not to defeat the purposes of the Draft Convention's on-site inspections. This analysis first requires an understanding of the extent to which such a convention would entail separate federal legislation to implement its provisions. Following this discussion, I explore possibilities for a federal statute whose specific goal would be to define remedies for Fourth Amendment violations that would not undermine the purposes of on-site inspection.

The question of whether an arms control treaty would be self-executing, i.e., would not require passage of a separate federal statute to implement its provisions, is important for determining how to structure the remedies that might be available for Fourth Amendment violations arising out of on-site inspections of private firms.[237] If the Draft Convention is non-self-executing, then a political forum involving both Houses of Congress is guaranteed for debating and deciding the proper outcome of the conflict between the need for on-site inspections and the constitutional right to be free from unreasonable searches. On the other hand, if the Draft Convention is self-executing, then affirmative Congressional action beyond the treaty ratification process would be required to legislate a resolution of this potential dispute.[238]

The test for determining whether a treaty is self-executing is not well defined.[239] The overriding consideration is said to be the intent of the parties to the agreement, although treaty language often omits any statement in this regard.[240] However, when a treaty requires the United States to perform a future act—especially one generally accepted as requiring explicit Congressional action, such as appropriating funds, enforcing a criminal law, or declaring war—then implementing federal legislation is a prerequisite.[241]

Viewed in this rather diffuse light, it appears that the on-site inspection provisions of the Draft Convention, or any other arms control treaty granting foreign parties a similar right to conduct on-site inspections, would be self-executing. First, while the text of the Draft Convention does not specifically state whether it is to be self-executing,[242] the on-site inspection provisions do not require the United States to perform future acts in this country; rather, they confer rights on other parties. Second, the obligations that would be imposed on the United States are not among those that are generally accepted as requiring explicit congressional action. Third, the subject matter involves both national security and foreign affairs, where the power of the President is at its zenith. It is fair to assume that any federal legislation to mitigate the potential conflict between the on-site inspection provisions in the Draft Convention and the Fourth Amendment would have to be initiated in Congress, apart from the ratification process itself.

A federal statute intended to mitigate constitutional conflict between the Fourth Amendment and on-site arms control inspections would have to limit the availability of injunctions to prevent an unconstitutional inspection pursuant to a treaty. If a statute were to make damages the only available remedy, then the federal government could simply "buy itself out"[243] of the potential embarrassment of a federal court enjoining an international organization from carrying out the terms of an arms control treaty. Such a statute, if constitutional, would largely resolve the problems identified above. This section analyzes whether such a limitation on remedies would be constitutionally acceptable.

It is important at the outset to distinguish between denial of court jurisdiction to hear a constitutional claim and limitation of the available remedies. No statute that purported to eliminate court jurisdiction to hear a plaintiff's claim seeking relief from alleged unconstitutional conduct could be expected to be upheld.[244] Congress, however, is empowered by the Constitution to legislate new remedies to constitutional violations.[245] In *Aetna Life Ins. Co.* v. *Haworth*,[246] the Supreme Court wrote:

"In providing remedies and defining procedure in relation to cases and controversies in the constitutional sense the Congress is acting within its delegated power over the jurisdiction of the federal courts which the Congress is authorized to establish. Exercising this control of practice and procedure the Congress is not confined to traditional forms or traditional remedies. . . . In dealing with methods within its sphere of remedial action the Congress may create and improve as well as abolish or restrict."[247]

Thus, Congress has broad power to enact a federal statute providing other remedies besides injunctions for the putative victims of unconstitutional on-site arms control inspections.

One possible approach would be to amend the Federal Tort Claims Act.[248] At present, this statute provides for recovery of damages for *Bivens*-type constitutional violations from "investigative or law enforcement officers of the United States government."[249] However, by its terms, it might not apply to employees of the Technical Secretariat. Therefore, this statute could be changed to provide explicitly for recovery of damages for unconstitutional on-site arms control inspections.

The harder question is whether the power to provide such new remedies carries with it the authority to eliminate injunctive relief at the same time. The Court has repeatedly stated that the availability of a damages remedy under the *Bivens* doctrine[250] may be limited by Congress.[251] In *Bush* v. *Lucas,*[252] which denied the plaintiff a damages remedy, the Court presented its most recent discussion of how it would approach the issue of statutory limitation of remedies:

"When Congress provides an alternative remedy, it may, of course, indicate its intent, by statutory language, by clear legislative history, or perhaps even by the statutory remedy itself, that the courts' power should not be exercised. In the absence of such a congressional directive, the federal courts must make the kind of remedial determination that is appropriate for a common-law tribunal, paying particular heed, however, to any special factors counselling hesitation before authorizing a new kind of federal litigation."[253]

The Court openly invited Congress to substitute its own remedy for unconstitutional conduct in place of those remedies the judiciary would otherwise provide.

City of Los Angeles v. Lyons[254] indirectly suggests that this deference to Congress might translate into a willingness to uphold a statute depriving plaintiffs of the right to obtain an injunction against an unconstitutional on-site inspection. In *Lyons,* the Court held that the plaintiff did not have standing to obtain an injunction against the Los Angeles Police Department's practice of using chokeholds during routine arrests.[255] While the decision did not acutally reach the question of the appropriate remedy, the tone of the Court's opinion reveals no particular attachment to injunctions as a remedy.[256] For example, the Court emphasized that a damages remedy would sufficiently deter future unconstitutional conduct even if injunctive relief were unavailable.[257]

Nevertheless, the outcome of a constitutional challenge to a statute eliminating injunctive relief cannot be guaranteed. Neither *Bush* nor *Lyons* is directly on point. In addition, the view that the remedy for a constitutional violation can be determined exclusively by Congress is disputed by a number of commentators, who have argued that the Constitution independently obligates the judiciary to select the most appropriate remedy for a constitutional violation, regardless of what Congress may legislate.[258] Therefore, developing a federal statute to defuse the constitutional confrontation inherent in on-site inspection schemes would require great care.[259]

Moreover, it remains to be seen whether Congress would vote to approve such a statute. The restriction of remedies for constitutional violations has aroused considerable Congressional controversy in the context of proposals to alter the exclusionary rule, to curtail federal court enforcement of prohibitions on prayer in public schools, and to prevent federal courts from restricting state abortion regulatory laws.[260] The private firms whose right to injunctive relief would be limited could be expected to resist. Thus, while the Court has indicated a willingness to entertain statutory remedies for constitutional violations that substitute for those that the judiciary might otherwise provide, Congress may be unwilling to approve them in the first place.

A bill to validate warrantless on-site arms control inspections might stimulate a searching inquiry into the entire subject. In view of the importance of on-site inspections both to national security and to constitutional jurisprudence, the public debate this could engender would be valuable. A decision on how best to balance these important concerns should be made with the broadest possible input.

CONCLUSION

On-site arms control inspections are a double-edged shield. They may offer greater assurance that the parties to an arms control treaty are complying with the treaty's provisions. At the same time, however, they increase the risk of intrusion into the privacy of those to be inspected.

The Draft Convention on the Prohibition of Chemical Weapons, proposed by the United States in 1984, includes on-site inspection provisions that raise serious Fourth Amendment questions. Insofar as the draft treaty language, the proposed annexes, and contemporary statements by American officials do not mention that obtaining a search warrant is a precondition for carrying out any of the three types of inspection which would be permitted, it must be assumed that the treaty does not intend to require search warrants. Thus, if the Draft Convention were to be ratified, its terms would not contemplate that a U.S. court could interpose the neutral review process ordinarily required by the Fourth Amendment prior to forced entry of private American commercial property by officials of an international organization.

It is possible that the Fourth Amendment warrant requirement would not be an obstacle to such a treaty because searches involving foreign affairs may be exempt from the usual warrant requirement. This difficult issue has been explicitly avoided by the Supreme Court, and the lower courts that have addressed it have split over how to strike the balance between the deference due the Executive Branch in matters involving foreign affairs and the privacy rights of citizens. If the Draft Convention enters into force, a reviewing court could be faced with the unpalatable choice of approving wide-ranging warrantless inspections by foreigners, or ruling that the key enforcement mechanism of an arms control treaty is unconstitutional.

Another exemption developed by the Supreme Court to permit warrantless searches of commercial property requires that the firms subject to inspection be part of a "pervasively regulated" industry. The case law in this area indicates that the determination of whether a given industry is pervasively regulated requires consideration of whether a social bargain can be implied between the federal government and the industry, in which the industry is regarded as having consented to warrantless inspections as a regulatory cost of doing business. Under this exception, the government inspections must be carried out pursuant to a carefully delineated inspection scheme embodied in law, which assures that inspections are both certain and regular.

Two of the three types of on-site inspections contained in the Draft Convention appear to be constitutionally defective under the pervasively regulated exemption to the Fourth Amendment warrant requirement. While the test for pervasive regulation appears to be met by the firms that would be subject to systematic international on-site verification inspections, the same cannot be said for those that would be searched under the Draft Convention's special and ad hoc on-site inspection provisions. Language in *Dow Chemical Co. v. United States*[261] contradicts the notion put forward by American officials that special on-site inspections of the domestic chemical industry would be permissible because the industry is heavily regulated. The case against ad hoc on-site inspections is even stronger because the subject of these inspections would be those least involved in the chemical weapons industry. Moreover, special and ad hoc on-site inspections are consciously designed to permit open-ended inspections on "short notice," and are neither certain nor regular.

Two methods of arms control verification suggested in this article could help avoid these legal problems. First, remote monitoring conducted from areas to which the general public has access with instruments that are not intrusive appears to be a promising starting point. Remote monitoring might have the added advantage of accommodating Soviet worries about espionage. Second, it is likely that federal government contractors could legally be induced to consent to on-site inspections in their contracts with the government, although this is more problematic with existing contractors insofar as their old contracts would probably require modification.

It is also time to recognize that effective arms control verification will require public involvement. If on-site inspections are a desirable form of verifying future treaties, then their impact on American society and business should be understood and evaluated by elected officials. Indeed, the Supreme Court may be more likely to uphold an on-site inspection scheme if Congress has carefully considered and approved—even if it has chosen to limit—the remedies that could be obtained for unreasonable searches. Therefore, federal legislation should be drafted detailing how such inspections should be carried out and outlining the remedies available in lawsuits contesting the constitutionality of on-site inspections.

As the nations of the world grow more interdependent, it is inevitable that the United States will face difficult choices between the benefits of international accord and the unique protections provided by the Constitution. This analysis demonstrates that even the most universally sought goal may pose contradictions that our form of

government is hardpressed to resolve. Realistic expectations and public debate are the most promising tools to put to the task.

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[1]*See* START in a Historical Perspective, address by Edward L. Rowney, chief negotiator to the Strategic Arms Reduction Talks (START), before the Kiwanis Club, Atlanta, Georgia (Apr. 10, 1984), *reprinted in* U.S. Dep't of State, Current Policy No. 563, at 2 (Apr. 10, 1984) [hereinafter Rowney]. *See generally* Perle, *What is Adequate Verification?* in SALT II and American Security 53 (1980); Note, *International Regulation of Chemical and Biological Weapons: "Yellow Rain" and Arms Control*, 1984 U. Ill. L. Rev. 1011, 1059.

[2]*See* Krepon, *Arms-Treaty Verification: A Political Problem*, Technology Review, May-June 1986, at 34, 46-47 (discussing both advanced monitoring techniques and cooperative measures as alternative means of verification). *See generally* Heckrotte, *A Soviet View of Verification*, Bull. of the Atomic Scientists, Oct. 1986, at 12 (discussing Soviet reluctance to submit to "intrusive" verification measures); Newcombe and Newcombe, *Chemical and Biological Weapons Inspection*, Peace Research Reviews, May 1982, at 55 (comprehensive review and bibliography of proposals that have been advanced for verification inspections pursuant to treaties regulating chemical and biological weapons).

[3]*See* R. Shearer, Jr., On-Site Inspection for Arms Control: Breaking the Verification Barrier 27 (1984). *But see* Lord, *Rethinking On-Site Inspection In U.S. Arms Control Policy*, Strategic Rev., Spring 1985, at 45.

[4]*See* Rowney, *supra* note 1.

[5]M. Krepon, Arms Control Verification and Compliance 33 (Foreign Policy Ass'n., Headline Series No. 270, Sept.-Oct. 1984); *see* Adam, *Peacekeeping by Technical Means*, IEEE Spectrum, July 1986, at 42, 44 & 66. The Soviet Union had accepted on-site verification inspections in the Protocol to the still-unratified Peaceful Nuclear Explosions Treaty. Protocol to the Treaty on Underground Nuclear Explosions for Peaceful Purposes, May 28, 1976, United States-USSR, art. III-VII, *reprinted in* 74 Dep't St. Bull. 804, 805-11 (1976). This heretofore isolated instance appears to have become a trend. On September 22, 1986, the Soviets consented to on-site inspections as part of an agreement intended to reduce the risk of military confrontation in Europe. Borawski, *Accord at Stockholm*, 42 Bull. of the Atomic Scientists 34, 35-36 (1986). On December 8, 1987, the Soviet Union agreed to on-site inspections to verify the Intermediate Nuclear Forces Treaty. Message From the President of the United States Transmitting the Treaty Between the United States and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles, Together With the Memorandum of Understanding and Two Protocols, Signed at Washington on Dec. 8, 1987, Treaty Doc. No. 11, 100th Cong., 2d Sess. (1988), at art. XI(1) [hereinafter Intermediate Nuclear Forces Treaty]. Futher, the Soviets have reportedly indicated a willingness to accommodate on-site inspections in the context of a comprehensive nuclear weapons test ban treaty and mutual balanced force reductions in Europe. M. Krepon, *supra* at 34.

[6]U.S. Draft Convention on the Prohibition of Chemical Weapons, submitted to the Conference on Disarmament, April 18, 1984 [hereinafter Draft Convention], *reprinted in* United States Arms Control and Disarmament Agency, Documents on Disarmament 269-99 (1984) [hereinafter Documents on Disarmament].

[7]The text itself is incomplete, with many items intentionally left blank for the negotiators to fill in as agreement is reached. *See, e.g., id.*, art. III(2)(b). Of particular importance to this discussion is Annex II of the Draft Convention, which purports to flesh out the verification provisions. The first sentence of Annex II reads: "Provisions along the following lines should be included:". *Id.*

[8]Geneva Protocol of 1925, 26 U.S.T. 571, T.I.A.S. No. 8061, 94 L.N.T.S. 65, *reprinted in* United States Arms Control and Disarmament Agency, Arms Control and Disarmament Agreements: Texts and Histories of Negotiations 14 (5th ed. 1982). This document provides an excellent brief history of the Protocol's adoption. *Id.* at 9-13. For discussions of types of chemical weapons and the history of their international regulation, see F. Brown, Chemical Warfare: A Study in Restraints (1968) and A. Thomas & A. Thomas, Jr., Development of International Legal Limitations on the Use of Chemical Weapons (1968).

[9]*Chemical Warfare: Arms Control and Proliferation, Joint Hearing Before the Senate Comm. on Foreign Relations and the Subcomm. on Energy, Nuclear Proliferation, and Government Processes of the Senate Comm. on Government Affairs*, 98th Cong., 2d Sess. 9 (1984) [hereinafter *Hearings*] (statement of Kenneth L. Adelman, Director, U.S. Arms Control and Disarmament Agency). *See generall* Ember, *Worldwide Spread of Chemical Arms Receiving Increased Attention*, Chemical and Engineering News, Apr. 14, 1986, at 8, which puts the number of nations possessing chemical weapons at between 15 and 31. The United States, the Soviet Union, France, and Iraq are known to possess them; Egypt, Syria, Libya, Israel, Ethiopia, Burma, Thailand, China, Taiwan, North Korea, and Vietnam are reported to possess them; and Iran and South Korea are reportedly seeking them. *Id.* at 8-11. Formal negotiations between the United States and the Soviet Union on chemical weapons began in 1977, and moved to the Forty Nation Conference on Disarmament in 1980. Statement by the U.S. Representative (Fields) to the Conference on Disarmament: Chemical Weapons Convention, April 26, 1984, *reprinted in* Documents on Disarmament, *supra* note 6, at 353, 354.

[10]Address by Vice President George Bush to the Conference on Disarmament: Chemical Weapons Convention, April 18, 1984, *reprinted in* Documents on Disarmament, *supra* note 6, at 299, 300.

[11]*Id.*

[12]*Id.* at 303.

[13]The American Ambassador to the Conference on Disarmament elaborated on the extent of this burden in a speech to the Conference. Referring to one of the types of on-site inspection that the Draft Convention would create, he noted:

My Government recognizes that these special on-site inspection procedures will require an unprecedented degree of openness on the part of all countries that pose a risk to sensitive activities not related to chemical weapons. . . . [T]he United States has decided that the benefits flowing from such an inspection scheme greatly outweigh the risks. . . . The United States seriously considers that any risks can be minimized and managed through appropriate procedures for initiating and conducting special on-site inspections. . . . I want to assure all delegations in the Conference on Disarmament that my Government did not take the decision lightly to include this "open invitation" provision in our draft convention. There should be no question that the United States is willing to accept the consequences of these provisions.

Statement by the U.S. Representative (Fields) to the Conference on Disarmament: Chemical Weapons Convention—Compliance, July 19, 1984 [hereinafter Statement by the U.S. Representative], reprinted in Documents of Disarmament, *supra* note 6, at 531, 533.

[14]Address by Vice President Bush, *supra* note 10, at 304. Curiously, a representative of the Chemical Manufacturers' Association was quoted recently as stating in reference to the Draft Convention that "industry wouldn't object to on-site inspections and to scrutinization of records" because the current recordkeeping burden is so great that compliance inspections would not make it greater, although he noted concern about "safeguards to protect intellectual property." Ember, *supra* note 9, at 16. A number of other chemical industry representatives have expressed concern about the degree to which the Draft Convention protects proprietary and confidential information. See Marshall, *Progress on a Chemical Arms Treaty*, 238 Science 471, 472 (Oct. 23, 1987); Ember, *Global Chemical Experts Offer Advice for Chemical Weapons Treaty*, Chemical and Engineering News, July 27, 1987, at 16. See generally Hearings, *supra* note 9 (discussing verification problems). The West German view was expressed more directly. The Representative of the Federal Republic of Germany reacted to the Draft Convention's verification provisions by stating:

"We are . . . concerned that the mechanisms envisaged for the verification of nonproduction, as laid out in the United States draft, should not entail unnecessary burdens for the civilian chemical industry. In the Federal Republic of Germany, the chemical industry is an important pillar of our overall economic performance. It is therefore a legitimate consideration to seek to avoid intrusive measures that would not directly raise the level of effectiveness of verification."

Statement by the Representative of the Federal Republic of Germany (Wegener) to the Conference on Disarmament: Conference Procedures and Chemical Weapons Convention, Apr. 26, 1984, reprinted in Documents on Disarmanent, *supra* note 6, at 364, 368.

[15]See M. Krepon, *supra* note 5, at 14-27.

[16]Id. at 14; Adam, *supra* note 5, at 42, 54.

[17]See Adam, *supra* note 5, at 74; M. Krepon, *supra* note 5, at 20-27.

[18]Adam, *supra* note 5, at 43.

[19]*See, e.g., Reagan and Gorbachev Sign Missile Treaty and Vow to Work for Greater Reductions*, N.Y. Times, Dec. 9, 1987, at A1, col. 6 (treaty on Intermediate Nuclear Forces signed in Washington); *How to Destroy 2,611 Missiles*, N.Y. Times, Dec. 9, 1987, at A1, col. 3.

[20]The principal technological threat to U.S. strategic forces at the moment is increasing missile accuracy. This has made possible an attack on hard targets (such as missile silos) at a cost that is easily commensurate with the value of the target. The result has been decreased ICBM survivability and a perceived increase in strategic instability, as one side or the other may find a first strike a viable option. The chief U.S. response has been to harden its land-based missile silos. . . .

Scowcroft, *Technology and Strategic Forces*, in Science and Security: The Future of Arms Control 1 (W. Wander, R. Scribner, and K. Luongo eds. 1986).

[21]*Id: see also* Adam, *supra* note 5, at 43. The need for a mobile, concealable land-based missile is offered as the major justification for the proposed development of the "Midgetman" missile. See Scowcroft, *supra* note 20, at 1-2.

[22]U.S. Arms Control and Disarmament Agency, *United States Arms Control Policy*, in Science and Security: The Future of Arms Control, *supra* note 20, at 87-88.

[23]Intermediate Nuclear Forces Treaty, SUPRA note 5; *see also* S. Goldman, P. Gallis & J. Vogas, Verifying Arms Control Agreements: The Soviet View 95-96 (Congressional Reseach Service Report No. 87-316F, Apr. 16, 1987), reprinted in Subcomm. on Arms Control, International Security and Science of the House Comm. on Foreign Affairs, 100th Cong., 1st Sess. (Comm. Print 1987); Mendelsohn, *INF Verification: A Guide for the Perplexed*, Arms Control Today, Sept. 1987, at 25 (brief history of evolution of American and Soviet positions on verification of an INF treaty).

[24]Intermediate Nuclear Forces Treaty, *supra* note 5, arts. II(2), III.

[25]S. Goldman, P. Gallis & J. Vogas, *supra* note 23, at 96.

[26]Mendelsohn, *supra* note 23, at 25-26.

[27]*Id.* at 28.

[28]Intermediate Nuclear Forces Treaty, *supra* note 5, art. XI.

[29]Flournoy, *A Rocky START: Optimism and Obstacles on the Road to Reductions*, Arms Control Today 7, 13 (Oct. 1987).

[30]Vice President Bush asserted: "If the international community . . . joins us in subscribing to [open invitation verification inspections], . . . [w]e will have set a bold example for overcoming barriers that impede effective arms control in other areas." Address by Vice President Bush, *supra* note 10, at 304.

[31]*See generally* Aaron, *Verification: Will It Work?*, N.Y. Times, Oct. 11, 1987, sec. 6 (Magazine), at 36.

[32]Address by Foreign Minister Shevardnadze, Geneva Conference on Disarmament (August 6, 1987), *reprinted in* Union of Soviet Socialist Republics, Mission to the United Nations, Press Release No. 103, at 11 (Aug. 7, 1987); *see also Soviet Says Pershing Missiles Are Main Impediment to Pact*, N.Y. Times, Aug. 7, 1987, at A1, col. 5.

On August 11, 1987, the Soviet Representative to the Conference on Disarmament elaborated on this position, emphasizing:

"In our view the procedure of challenge inspections must securely ensure that no fact of violating the Convention and the consequences of such violation can be concealed by a state. . . . The fact that

we have adopted the principle of mandatory challenge inspections does not however mean that we can disregard a possible disclosure of sensitive data, which can happen during such inspections, especially in case of abuse."

Statement by Youri K. Nazarkin, Ambassador Extraoridnary and Plenipotentiary, U.S.S.R. Representative to the Conference on Disarmament (Aug. 11, 1987), at 2. (Copy on file with the *Yale Journal of International Law*). The speech discusses at great length various means of proscribing challenge inspections in order to protect such "sensitive date." *See id.*

[33]Adam, *supra* note 5, at 42-43.

[34]*U.S. Group Checks Soviet Atomic Site,* N.Y. Times, July 14, 1986, at A1, col. 5; *Westerners Reach Soviet to Check Atom Site,* N.Y. Times, July 6, 1986, at A1, col. 2.

[35]*Inside a Key Russian Radar Site: Tour Raises Questions on Treaty,* N.Y. Times, Sept. 7, 1987, at A1. col. 1.

[36]*Soviets Allow Experts to Tour Chemcial Weapons Facilities,* Wash. Post, Oct. 5, 1987, at A17, col. 4.

[37]Adam, *supra* note 5, at 70, 74 (quoting Warren Heckrotte, U.S. technical advisor on nuclear test ban talks from 1961 through the late 1970s).

[38]Jack Sprat Could eat no Fat,
His Wife could eat no Lean;
And so, betwixt them both,
They lick'd the platter clean.

W. Baring-Gould & C. Baring-Gould, The Annotated Mother Goose 63 (1962).

[39]Address by Vice President Bush, *supra* note 10, at 300.

[40]The Draft Convention defines the term "chemical weapons" to include, *inter alia,* super-toxic lethal, other lethal, and other harmful chemicals, and their precursors, exempt for those chemicals intended solely for permitted purposes . . . and except for those chemicals which are not super-toxic lethal, or other lethal, chemicals and which are used by a Party for domestic law-enforcement and riot control purposes or used as a herbicide. . . .

Draft Convention, *supra* note 6, at art. II(1)(a). Each of the terms "super-toxic lethal chemical," "other lethal chemical," "other harmful chemical," and "toxic chemical" are defined in technical language relating to their potential for harming humans. *Id.*, art. II(2)-(5). "Precursors" are chemicals that can be "used in production of a super-toxic lethal chemical, other lethal chemical, or other harmful chemical." *Id.*, art. II (6).

[41]The term "chemical weapons production facility" includes buildings and equipment designed, constructed, or used since January 1, 1946, for producing any toxic chemical for chemical weapons or certain precursors, or for filling chemical weapons. *Id.*, art. II(10).

[42]Article II of the Draft Convention specifies the activities that would be permitted. For example, each party would be allowed to possess no more than one metric ton of super-toxic lethal chemicals or certain precursors, *id.*, art. III(2)(a), and any production of these could only take place at a single facility with a limited manufacturing capacity. *Id.*, art. III(2)(b).

[43]*Id.*, art. V(1)(e).

[44]*Id.*, art. VI(1)(g).

[45]*Id.*, art. VII(2).

[46]*Id.*, art. VII(3).

[47]*Id.*, annex I, §B(2)(a)-(c).

[48]*Id.*, annex I, §C(1).

[49]*Id.*, annex I, §D.

[50]*Id.*, annex I, §C(2).

[51]*Id.*, annex I, §C(3)(a).

[52]*Id.*, annex I, §C(1).

[53]*Id.*, annex I, §D(3).

[54]*Id.*, annex I, §D(1).

[55]*But see* Note, *supra* note 1, at 1063, which states that the Draft Convention generally utilizes only two forms of on-site inspection: special on-site inspections and ad hoc on-site inspections. However, this omits systematic international on-site verification inspections, which have an independent basis in the Draft Convention. *Compare* Draft Convention, *supra* note 6, art. VII(2)(a) *with id.*, art. VII(2)(c).

[56]*See* Draft Convention, *supra* note 6, arts. III-VI.

[57]*Id.*, art. V(1)(c).

[58]*Id.*, art. V(2).

[59]*Id.*, art. VI(1)(e).

[60]*Id.*, art. V(1)(f).

[61]*Id.*

[62]*Id.*, art. III(2)(b).

[63]*Id.*, art. III(3)(b).

[64]*Id.*, annex II, § B(A)(2).

[65]*Id.*, annex II, § B(G)(3).

[66]*Id.*, annex II, § B(F)(2) (providing for periodic inspections of the single facility each Party is permitted to use for producing super-toxic lethal chemicals and key precursors).

[67]*Id.*, annex II, §§ B(B)(1),(3) (specifying the inspections to be performed before and after the destruction of chemical weapons stocks).

[68]Draft Convention, *supra* note 6, art. X(1).

[69]The power of a member of the Fact-Finding Panel to request a special on-site inspection is termed a "right." *Id.*

[70]*Id.*, annex I, § C(2)(c).

[71]*Id.*, art. X(2)(b).

[72]*Id.*, art. X(4).

[73]*Id.*

[74]*Id.*, art. X(1)(a)-(b). It appears that the Draft Convention also would allow special on-site inspections at facilities where systematic international on-site verification inspections had already taken place.

[75]*Id.*, art. X(1)(b).

[76]*Id.*, annex II, § B(H)(2).

[77]However, the policy of including facilities that "might be suspected" of treaty violations certainly suggests that a broad range of installations would be subject to special on-site inspections. This is reinforced by the procedure for ordering such inspections, which permits a single party to request one and provides for no impartial review. *Id.*, art. X(I).

[78]Statement by the Soviet Representative (Issraelyan), to the Conference on Disarmament: Chemical Weapons [Extract], Apr. 26, 1984, *reprinted in Documents on Disarmament, supra* note 6, at 359, 361.

[79]Pincus, *U.S. Clarifies Stand on Chemical Pact: Soviets Offered Private Plant Inspection,* Wash. Post, May 1, 1984, at A12, col. 5.

[80]Statement by the U.S. Representative, *supra* note 13, at 531, 534 (emphasis in original).

[81]Dickson, *Chemical Weapons Pact Edging Closer,* 235 Science 1452, 1453 (1987).

[82]*See* Statement by the U.S. Representative, *supra* note 13, at 534, in which the American position on the Draft Convention is stated: "No imbalance in inspection obligations is either desired, intended, or contained. . . ."

[83]Draft Convention, *supra* note 6, art. I(d).

[84]Marcuss and Richard, *Extraterritorial Jurisdiction in United States Trade Law: The Need for a Consistent Theory,* 20 Colum. J. Trans. L. 439, 441 (1981). This analysis is reinforced by Article 29 of the Vienna Convention on the Law of Treaties, which states: "Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory." Vienna Convention on the Law of Treaties, Jan. 27, 1980, U.N. Doc. A/Conf. 39/27, 8 I.L.M. 679, 691 (1969), *reprinted in* 63 Am. J. Int'l L. 875, 884 (1969). However, this Convention has not been ratified by the United States. *See* T. Franck & M. Glennon, Foreign Relations and National Security Law 242 (1987). The Convention has not been signed by the Soviet Union. M. Bowman & D. Harris, Multilateral Treaties Index and Current Status 326 (1984).

[85]Marcuss & Richard, *supra* note 84, at 443. A corollary to the question of whether the United States could consent to on-site arms control inspections of a foreign subsidiary of an American firm is whether such a foreign subsidiary would be entitled to Fourth Amendment protection. While the Fourth Amendment certainly would protect an American citizen abroad from unreasonable searches by agents of the U.S. government under color of federal law, it is unclear whether this would extend to subsidiaries that are foreign citizens. Note, *The Extraterritorial Application of the Constitution—Unalienable Rights?,* 72 Va. L. Rev. 649, 659-71 (1986).

[86]Marcuss & Richard, *supra* note 84, at 444, 448-52. Generally, the antiboycott statute precludes persons subject to its jurisdiction from refusing to do business with anyone pursuant to an agreement with, requirement of or on request or behalf of a boycotting country. It also outlaws boycott-based refusals by such persons to employ any United States person because of race, religion, sex or national origin. *Id.* at 449.

[87]*Compare* Draft Convention, *supra* note 6, art. X(1) *with id., art* XI(1).

[88]*Id.* art. XI(2)(b), Annex I, A(5).

[89]*Id.* art. XI(2)(b).

[90]*Id.* art. XI(2)(c).

[91]*Id.* art. XI(1).

[92]*See supra* text accompanying note 79.

[93]Read broadly, private homes might be included as well.

[94]Draft Convention, *supra* note 6, annex II, §B(H)(3).

[95]*Id.*, annex II, §B(H)(3)(b).

[96]*Id.*, annex II, §B(H)(3)(c).

[97]*Id.*, annex II, §B(H)(3)(d).

[98]*See generally* L. Henkin, Foreign Affairs and the Constitution 251-70 (1972).

[99]Draft Convention, *supra* note 6, art. XII (emphasis added); *cf.* Reid v. Covert, 354 U.S. 1, 17 (1975) ("This Court has regularly and uniformly recognized the supremacy of the Constitution over a treaty.") (footnote omitted).

[100]U.S Const. amend. IV.

[101]*See, e.g.,* California v. Ciraolo. 106 S. Ct. 1809, 1811 (1986).

[102]389 U.S. 347, 360-62 (1967) (Harlan. J., concurring).

[103]*Id.* at 361.

[104]*Id.*

[105]106 S. Ct. 1809.

[106]*Id.* at 1812.

[107]Payton v. New York, 445 U.S. 573, 586 (1979) (citation ommitted).

[108]See v. City of Seattle, 387 U.S. 541, 543 (1967).

[109]Camera v. Municipal Court, 387 U.S. 523, 528-29 (1967). *See generally* Bacigal, *The Emergency Exception to the Fourth Amendment,* 9 U. Rich. L. Rev. 249 (1975).

[110]*Camara,* 387 U.S. at 532-33.

[111]"'[P]robable cause' is the standard by which a particular decision to search is tested against the constitutional mandate of reasonableness." *Id.* at 534.

[112]The fact that these inspectors might be foreign citizens employed by an international organization probably would not relieve them of whatever responsibilities the Fourth Amendment otherwise would impose directly on federal employees, because their actions would occur under color of federal law with the active cooperation of the federal government. *See* Annotation. *Application of Fourth Amendment Exclusionary Rule to Evidence Obtained through Search Conducted by Officials of Foreign Government,* 33 A.L.R. Fed. 342, 347-49 (1977).

[113]Nor do the annexes to the Draft Convention imply that on-site inspections in the United States ordinarily would be preceded by a warrant. While mention is made in several places of restrictions on the time, place, and manner of inspections that should be the subject of future negotiations, *see, e.g.,* Draft Convention, *supra* note 6, annex II, §B(H), the only provision that could reasonably be construed to allow for a warrant is Article XI(2)(c), which would allow a Party to refuse an ad hoc on-site inspection. In theory, the United States could seek a warrant for any location or facility sought to be inspected under Article XI, obtain a magistrate's decision within the requisite 24 hours of such a request by the Fact-Finding Panel, *id.*, and refuse the inspection if the decision is unfavorable. However, this assumes congruence between the level of suspicion sufficient to trigger an ad hoc on-site inspection and the level of probable cause necessary to support a warrant.

[114]The Vice President underscored the extraordinary nature of the on-site inspection provisions in stating:

"This pledge to an "open invitation" for inspections is not made lightly. We make it because it is indispensable to an effective chemical weapons ban. The essence of verification is deterrence of violations through the risk of detection. The "open invitation" procedures will increase the chances that violations will be detected and the chances that, in the event of violations, the evidence necessary for an appropriate international response can be collected. That is the heart of deterring violations." Address by Vice President Bush, *supra* note 10, at 303.

[115]State courts probably would lack jurisdiction to enter injunctive relief in such a case because it would involve restraining the actions of officials, albeit foreigners, acting under color of federal law. *See* Redish & Woods, *Congressional Power to Control the Jurisdiction of Lower Federal Courts: A Critical Review and a New Synthesis,* 124 U. Pa. L. Rev. 45, 88-92 (1975).

[116]The Supreme Court, in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics,* 4303 U.S. 388 (1971), announced that damages are available to plaintiffs to compensate for violations of

Fourth Amendment rights by agents of the federal government. The Court held, however, that damages would be available only to the extent that the individual plaintiff was hurt. The fact that constitutional rights, rather than mere common law or statutory rights, might be at the root of the action would thus not add to the compensation. Rothberg, *Private Remedies for Constitutional Wrongs—A Matter of Perspective, Priority, and Process,* 14 Hastings Const. L.Q. 77, 86-87 (1986) (discussing Memphis Community School Dist. V. Stachura, 477 U.S. 299 (1986)). However, a suit for damages under *Bivens* can be unsuccessful because of the immunity of various federal officials to such actions. *See* Mitchell v. Forsyth, 472 U.S. 511 (1985). *Compare* Nixon v. Fitzgerald, 457 U.S. 731 (1982) (President entitled to absolute immunity from damages liability predicated on official acts) *with* Harlow v. Fitzgerald, 457 U.S. 800 (1982) (presidential aides entitled only to qualified or good faith immunity).

[117]In Marshall v. Barlow's, Inc., 436 U.S. 307 (1978), the Court upheld the grant of an injunction against an attempted search that it found to contravene the Fourth Amendment. Injunctions have historically been a more likely remedy than damages in constitutional litigation. Rotenberg, *supra* note 116, at 85. A plaintiff's allegation that there is no adequate remedy at law for injuries inflicted by an unconstitutional search would be bolstered by the decision in Megapulse, Inc. v. Lewis, 672 F.2d 959 (D.C. Cir. 1982), which held that an injunction would lie against federal government disclosure of certain trade secrets. *Id.* at 970. In Dow Chemical Co. v. United States, 106 S. Ct. 1819 (1986), the Court stated that "the right to be free of appropriation of trade secrets is protected by law." *Id.* at 1823.

In recent years, the Supreme Court has limited the injunction remedy by requiring plaintiffs to prove "great and immediate" harm in addition to the traditional requirement of demonstrating irreparable injury. City of Los Angeles v. Lyon 461 U.S. 95, 106 (1983); *see also* Rotenberg, *supra* note 116, at 85. It seems unlikely, however, that the notion of "special factors counselling hesitation in the absence of affirmative action by Congress" noted in *Bivens,* 403 U.S. at 396, would be an obstacle to an injunction under current law because such a suit would not involve the creation of a new remedy; it would merely involve the application of a long-recognized remedy to a new fact situation. Nevertheless, it is possible that the Court would extend such an exception to obviate a suit like this one. *Cf.* Bush v. Lucas, 462 U.S. 367 (1983) (judicial relief denied for violation of federal employee's First Amendment rights where Congress has provided administrative forum).

[118]*See generally* Note, *Congressional Nuclear Freeze Proposals: Constitutionality and Enforcement,* 23 Harv. J. on Legis. 483, 486-519 (1986). While it is unclear whether this hypothetical lawsuit would be ripe prior to the announcement that the plaintiff chemical manufacturer was to be the subject of an on-site inspection, *cf.* Boyle v. Landry, 401 U.S. 77, 80-81 (1971), it is evident that once the decision to search its premises has been made, the dispute would be ripe for resolution. *Cf.* Marshall v. Barlow's, Inc., 436 U.S. 307.

[119]454 U.S. 464 (1982).

[120]*Id.* at 472 (citations and footnote omitted).

[121]For example, it might be claimed that disclosure of trade secrets arising out of an inspection of the plaintiff chemical manufacturer would harm its competitive position, either in the domestic or the world market. *Cf.* Association of Data Processing Service Organizations v. Camp, 397 U.S. 150, 152 (1970).

[122]369 U.S. 186 (1962).

[123]*Id.* at 217.

[124]*See* Goldwater v. Carter, 444 U.S. 996, 1003-04 (Rehnquist, J., concurring) (citing United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 315 (1936)). *See generally* Note, *Whether the President May Terminate A Mutual Defense Treaty Without Congressional Approval Under the Constitution is a Non-Justiciable Political Question,* 29 Drake L. Rev. 659 (1979)-80) In *Dow,* however, the Court refused to approve a lower court injunction against aerial photography by an agency of the federal government that might record trade secrets, apparently because the Court was not convinced that the government would reveal them to competitors. 106 S. Ct. at 1823. The Court noted: "If the Government were to use the photographs to compete with Dow, Dow might have a Fifth Amendment 'taking' claim." *Id.*

[125]Baker v. Carr, 369 U.S. at 217.

[126]*Id.*

[127]*See, e.g.,* Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635 (1951) (Jackson, J., concurring) (when the President acts pursuant to express congressional authorization, "his authority is at its maximum, for it include all that he possesses in his own right plus all that Congress can delegate").

[128]Baker v. Carr, 369 U.S. at 217; *see also* Scharpf, *Judicial Review and the Political Question: A Functional Analysis,* 75 Yale L.J. 517, 542 (1966).

[129]Baker v. Carr, 369 U.S. at 211 ("[I]t is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance."). For a critique of the Court's use of the political question doctrine in international law, see Lobel, *The Limits of Constitutional Power: Conflicts Between Foreign Policy and International Law,* 71 Va. L. Rev. 1071 (1985): "In general, judicial review should be available for challenges to executive or congressional actions that violate fundamental international law norms. . . . The attempts to justify a blanket rule of judicial abstention on international law challenges to foreign policy are ill-conceived. . . ." *Id.* at 1166-67. Lobel considers "fundamental international norms" to be "the right to life, the prohibition of torture or inhuman or degrading treatment, the freedom from slavery, or the proscription on ex post facto laws." *Id.* at 1146. Lobel does not include the right to be free from unreasonable searches in this list.

[130]444 U.S. 996, 1004 (1979) (Rehnquist, J., concurring).

[131]D. Aronowitz, Legal Aspects of Arms Control Verification in the United States 18-19 (1965).

[132]*See, e.g.,* United States v. United States Dist. Court for the E. Dist. of Mich. *ex rel,* Keith, 407 U.S. 297, 321-22 (1972); Chagnon v. Bell, 642 F.2d 1248, 1259 (D.C. Cir. 1980) ("[I]t is plain that the Supreme Court in *Keith* left unanswered the question whether a foreign agent exception to the warrant requirement exists."); Katz v. United States, 389 U.S. 347, 358 n.23 (1967) ("Whether safeguards other than prior authorization by a magistrate would satisfy the Fourth Amendment in a situation involving the national security is a question not presented by this case.").

[133]629 F.2d 908 (4th Cir. 1980).

[134]*Id.* at 911-12. In *Chagnon,* the court considered the appeal of a civil suit for damages against the Attorney General of the United States arising out of the same facts as *Truong,* but filed by plaintiffs whose conversations with Truong had been overheard in the course of the wiretaps. 642 F.2d at 1252-53, 1255. The court held that "the acts of the Attorney General were protected by the doctrine of qualified immunity," *id.* at 1266, and affirmed the judgment of the lower court granting the defendant summary judgment. *Id.* at 1251.

[135]629 F.2d at 914 (citations omitted).

[136]*Id.* at 916.

[137]516 F.2d 594 (D.C. Cir. 1975) (en banc) (Zweibon I), *cert. denied,* 425 U.S. 944 (1976); *cf.* Zweibon v. Mitchell, 720 F.2d 162 (D.C. Cir. 1983) (Zweibon IV), *cert. denied,* 469 U.S. 880 (1984); Zweibon v. Mitchell, 606 F.2d 1172 (D.C. Cir. 1979) (Zweibon III), *cert. denied,* 453 U.S. 912 (1981); In Re Zweibon, 565 F.2d 742 (D.C. Cir. 1977) (per curiam) (Zweibon II). All of the subsequent opinions involved tangential issues.

[138]Zweibon I, 516 F.2d at 605, 608-10.

[139]*Id.* at 669-70. Six of the eight judges who heard this case agreed with this holding. In *Chagnon,* 642 F.2d at 1248, the District of Columbia Circuit characterized its earlier holding in *Zweibon I* as restricting "the potential reach of the foreign agent exception by explicitly eliminating from its purview surveillance aimed at individuals or domestic organizations not acting on behalf of a foreign power. The *Zweibon I* court never squarely ruled that the putative foreign agent exception to the warrant requirement does not exist." *Id.* at 1259 (footnote omitted).

[140]Zweibon I, 516 F.2d at 633.

[141]*Id.* at 651.

[142]*Id.* at 653.

[143]*See* New Jersey v. T.L.O, 469 U.S. 325, 340 (1985) (no warrant requirement for school officials searching schoolchildren "when 'the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search.'") (quoting Camara v. Municipal Court, 387 U.S. 523, 532-33). In O'Connor v. Ortega, 107 S. Ct. 1492 (1987), the Court added that each "particular class of searches" implies its own standard of reasonableness. *Id.* at 1499.

[144]The Supreme Court has discussed two other possible exemptions. In *Camara,* 387 U.S. 523 (1967), the Court recognized an "emergency situations" exemption, such as the need to seize unwholesome food, vaccinate against smallpox, or implement a health quarantine. *Id.* at 539 (citations omitted). Similarly, in Michigan v. Tyler, 436 U.S. 499 (1978), the Court held that a burning building created "an exigency of sufficient proportions to render a warrantless entry [by firefighters] 'reasonable.'" *Id.* at 509. Since the possible violation of a treaty would not appear in itself to threaten public safety in such a direct manner, it does not seem likely that a reviewing court would find the emergency situations exception applicable to on-site arms control inspections. Moreover, the "exigency" that might be claimed to justify warrantless on-site inspections under the Draft Convention is one that would be created by the time limits in the treaty itself, rather than something inherent in the threat posed to society by chemical weapons. *Cf.* Note, *Police Created Exigencies: Implications for the Fourth Amendment,* 37 Syracuse L. Rev. 147 (1986). In any case, this is not the justification on which the Reagan Administration seems to rely for its assertion that chemical industry property would be subject to inspection under the Draft Convention.

The second exemption is the so-called "routine inspection" exemption. In Michigan v. Tyler, 436 U.S. 499, the Supreme Court considered whether a fire department should have obtained a search warrant to reenter a burned-out building over two weeks after extinguishing the blaze in order to investigate the possibility of arson. *Id.* at 511. In its opinion, the Court distinguished between the kind of "programmatic" searches typified by routine building inspections and searches like the instant case, which it characterized as "responsive to individual events." *Id.* at 507. Whereas constitutional reasonableness can be achieved in routine searches by the "broad legislative or administrative guidelines specifying the purpose, frequency, scope, and manner of conducting the inspections," *id.,* investigatory fire searches were found to be sufficiently focused that they justified the requirement of a warrant so that a magistrate could balance the "need for the instrusion on the one hand, and the threat of disruption to the occupant on the other." *Id.* The Court thus indicated that a heavier constitutional burden faces the government when it seeks to search without a warrant based on suspicion of some criminal wrongdoing than when it seeks to perform a routine search. *Id. See generally* Note, *Administrative Agency Searches Since* Marshall v. Barlow's, Inc.*: Probable Cause Requirements for Nonroutine Administrative Searches,* 70 Geo. L.J. 1183 (1982) (detailed discussion of different implications under Fourth Amendment of routine and nonroutine searches) [hereinafter Note, *Administrative Agency Searches*].

[145]Donovan v. Dewey, 452 U.S. 594, 598-99 (1981).

[146]United States v. Biswell, 406 U.S. 311, 316 (1972); *see also* Note, *Administrative Agency Searches, supra* note 144, at 1188-89.

[147]*See supra* note 80 and accompanying text.

[148]406 U.S. 311 (1972).

[149]The term "social bargain" means an unstated agreement between a citizen and the government in which the citizen is permitted to carry on certain activities that otherwise would be prohibited, in return for accepting restrictions on the enterprise that would be inappropriate for most undertakings. Such social bargains are often struck to enable citizens to conduct activities that are unusually hazardous, but from which society as a whole benefits; the additional reguation that is extracted in return by the government is intended to provide society with a greater degree of protection than it would otherwise be entitled to receive. The term "social contract" is not used in order to avoid the many philosophical controversies that it engenders, although the notion of a social bargain is not unlike a social contract writ small. *Compare* J. Rawls, a Theory of Justice 16, 112 (1971), *with* Lyons *Nature and Soundness of the Contract and Coherence Arguments, in* Reading Rawls: Critical Studies of "a Theory of Justice" 149-60(1974).

[150]18 U.S.C. §921 (1982).

[151]406 U.S. at 311-13.

[152]*Id.* at 315, 316 (citations omitted).

[153]*Id.* at 317.

[154]436 U.S. 307 (1978).

[155]*Id.* at 313.

[156]*Id.*

[157]*Id.* at 314.

[158]*Id.* at 313-14.

[159]*Id.* at 314.
[160]*Id.*
[161]452 U.S. 594 (1981).
[162]30 U.S.C. §801 (1982).
[163]452 U.S. at 596.
[164]*Id.* at 597-98.
[165]*Id.* at 599-600.
[166]*Id.* at 599 (citation omitted).
[167]*Id.* at 600.
[168]*Id.* at 603.
[169]*Id.*
[170]*See id.*
[171]*Id.* at 603-04.
[172]*Id.* at 604.
[173]*Id.* at 604-05.
[174]*Id.* at 604.
[175]*See supra* text accompanying note 56-67.
[176]*See supra* note 14 and accompanying text. In addition, it appears that the so-called "routine" exemption to the Fourth Amendment, as discussed by the Supreme Court in Michigan v. Tyler, 436 U.S. 499 (1978), would support warrantless systematic on-site inspections. *See supra note 144.*
[177]*See supra* text accompanying notes 78-82.
[178]106 S. Ct. 1819 (1986).
[179]The Supreme Court's decision in *Tyler,* 436 U.S. 499, would seem to argue against warrantless special on-site inspections. *See supra* note 144.
[180]106 S. Ct. at 1828 (Powell, J., dissenting).
[181]*Id.* at 1822 (citation omitted).
[182]*Id.* at 1827.
[183]*Id.* at 1825 (citation omitted). The dissent agreed with the majority that a warrant would be required to search the interior of Dow's buildings. Presenting a more detailed discussion than the majority of the reasons why the exemption for pervasively regulated industries did not apply in this case, the dissent emphasized that "the exception is based on a determination that the reasonable expectation of privacy that the owner of a business does enjoy may be protected by the regulatory scheme itself." *Id.* at 1830-31 (Powell, J., dissenting) (citation omitted). *Cf.* Note, *Administrative Searches—The Ninth Circuit Expands the Closely Regulated Industry Exemption to the Fourth Amendment,* 1985 Ariz. St. L.J. 973 (fishing vessels subject to warrantless on-site inspections in order to determine whether porpoises were being killed illegally).
[184]*See supra* text accompanying note 80.
[185]*Id.*
[186]*See supra* text accompanying note 173.
[187]Donovan v. Dewey, 452 U.S. 594, 599 (1981).
[188]*See supra* text accompanying note 88.
[189]*See supra* text accompanying notes 109-111.
[190]*See supra* text accompanying note 90.
[191]5 U.S. (1 Cranch) 137, 167, 177 (1803).
[192]418 U.S. 683, 704 (1974).
[193]*Compare* Katz v. United States, 389 U.S. 347, 359-60 (1967) (Douglas, J., concurring) *with id.* at 362-64 (White, J., concurring).
[194]Draft Convention, *supra* note 6, art. VII(2).
[195]Johnson v. United States, 333 U.S. 10, 13-14 (1948).
[196]389 U.S. 347 (1967).
[197]*Id.* at 357 (citations and footnotes omitted; ellipses and brackets in original).
[198]*See supra* text accompanying notes 91-93.
[199]Ad hoc on-site inspections resemble the general warrants that the King of England relied upon to search the businesses of colonists before the Revolutionary War. It was the reaction to such warrants that gave rise to the Fourth Amendment:

"An important forerunner of the first 10 Amendments to the United States Constitution, the Virginia Bill of Rights, specifically opposed "general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed." The general warrant was a recurring point of contention in the Colonies immediately preceding the Revolution. The particular offensiveness it engendered was actually felt by the merchants and businessmen whose premises and products were inspected for compliance with the several parliamentary revenue measures that most irritated the colonists. [T]he Fourth Amendment's commands grew in large measure out of the colonists' experience with the writs of assistance . . . [that] granted sweeping power to customs officials and other agents of the King to search at large for smuggled goods."

Marshall v. Barlow's, Inc., 436 U.S. 307, 311 (1978) (footnotes and citations omitted). The Draft Convention, however, does restrict ad hoc on-site inspections to "locations" that "are clearly defined." Draft Convention, *supra* note 6, annex II, B(H)(3)(c)-(d). The Draft Convention urges that the enforcement agency administering the treaty make "arrangements" that "limit intrusion to the level necessary to determine the facts," and narrow inspections "to places relevant to determination of the facts." *Id; see also supra* note 113 (discussing whether warrants might be intended as prerequisite to ad hoc on-site inspections); *supra* text accompanying notes 190-92 (explaining why the review process by the Fact-Finding Panel would not be an effective substitute for review of a proposed warrant by an American court).
[200]A court is even less likely to approve ad hoc on-site inspections if the Draft Convention is read to include private homes among the "locations or facilities" they could reach. *See supra* note 93 and accompanying text. In Payton v. New York, 445 U.S. 573 (1980), the Supreme Court declared:

"The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home. . . . [T]he Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant."

Id. at 589-90; *see also* Camara v. Municipal Court, 387 U.S. 523 (1967) (Fourth Amendment warrant requirement includes administrative searches of homes). The sorts of "exigent circumstances" that can justify a warrantless search include "violence. . . . [a] movable vehicle . . . , an arrest or imminent destruction, removal, or concealment of the property." United States v. Jeffers, 342 U.S. 48, 52 (1951). This definition implicitly assumes a case-by-case judicial analysis of the facts of each search. The idea of an entire new category of warrantless home searches is thus directly at odds with Fourth Amendment jurisprudence.
[201]This analysis, of course, does not imply that these methods could suffice to verify a given arms control treaty. That is a political and technical matter, as well as a legal one. This section merely suggests approaches that maximize the constitutional acceptability of verification.
[202]106 S. Ct. 1819 (1986). *See supra* text accompanying notes 180-83 for a summary of the facts of this case.
[203]106 S. Ct. at 1827.
[204]*Id.* at 1825.
[205]*Id.* (citation omitted).
[206]*Id.* at 1826 (citation omitted).
[207]*Id.* at 1826-27.
[208]*Id.* (footnote omitted).
[209]*Id.* at 1829 (Powell, J., dissenting).
[210]*Id.* at 1826.
[211]McGraw-Hill Encyclopedia of Science & Technology, *Sensitivity* 272 (6th ed. 1987).
[212]More precisely, selectivity is "the ability of a radio receiver to separate a desired signal frequency from other signal frequencies some of which may differ only slightly from the desired value." *Id., Selectivity,* at 243.
[213]*Cf.* California v. Ciraolo, 106 S. Ct. 1809, 1812-13 (1986); Oliver v. S., 466 U.S. 170, 182 n. 13 (1984) ("Certainly the Framers did not intend that the Fourth Amendment should shelter criminal activity wherever persons with criminal intent choose to erect barriers and post 'No Trespassing' signs.").
[214]*See* United States v. Knotts, 460 U.S. 276, 282-85 (1983).
[215]One example of a selective and sophisticated device with application to arms control verification might be a seismometer, which is well suited for detecting and measuring underground nuclear explosions. *See* Evernden & Marsh, *Yields of U.S. and Soviet Nuclear Tests,* Physics Today, Aug. 1987, at 37; Archambeau, *Verifying A Test Ban: A New Approach to Monitoring Underground Nuclear Tests,* Issues in Science and Technology, Winter 1986, at 18.
[216]*See* Adam, *supra* note 5, at 44.
[217]Article X subjects to special on-site inspection all "facilities controlled by the Government of a Party." *See supra* text accompanying notes 75-82.
[218]328 U.S. 624 (1946), *judgment vacated on other grounds,* 330 U.S. 800 (1947) (per curiam). That the reasoning in *Zap* retained its vitality despite vacation of the judgment is confirmed by Katz v. United States, 389 U.S. 347, 358 n. 22 (1967), where the Court stated: "A search to which an individual consents meets Fourth Amendment requirements, Zap v. United States, 328 U.S. 624. . . ."
[219]328 U.S. at 627.
[220]*Id.* at 624.
[221]*Id.* at 628.
[222]48 U.S. 448 (1980).
[223]*Id.* at 474 (citations omitted).
[224]*Id.* at 475-76.
[225]328 U.S. at 628.
[226]444 U.S. 507 (1980) (per curiam).
[227]*Id.* at 507-08.
[228]*Id.* at 516.
[229]*Id.* at 509 n.3.
[230]*Id.* (citation omitted).
[231]460 U.S. 824 (1983).
[232]*Id.* at 827-28.
[233]*Id.* at 840-841.
[234]*Id.* at 843.
[235]*Id.* at 842.
[236]*See e.g.,* 48 C.F.R. §52.246-8(c) (1986). This section sets out a standard contract clause to be included in cost reimbursement contracts for research and development under the Federal Acquisition Regulations System, and states, *inter alia*:

"The Government has the right to inspect and test all work called for by the contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or its subcontractors engaged in the contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work."

[237]*See generally,* Henkin, supra note 98, at 156-67.
[238]For example, the United States Senate could express a reservation that such a treaty would not take effect until the enactment of implementing legislation. *Id.* at 159.
[239]*See id.* at 158.
[240]*See id.*
[241]*Id.* at 159-60. *See Panama Canal Treaties: Hearings on Executive N Before the Senate Comm. on Foreign Relations (Part 1-Administration Witnesses),* 95th Cong., 1st Sess. 1-10 (1977) (statement of Griffin B. Bell, Attorney General of the United States), *reprinted in* 2 M. Glennon & T. Franck, United States Foreign Relations Law 339-48 (1980).
[242]The text of the Draft Convention offers little support for either position. Article XII requires each Party to "take any measures necessary in accordance with its constitutional processes to implement this Convention." Draft Convention, *supra* note 6, art. XII. But the very question that must be decided to determine whether the Draft Convention would be self-executing is what the constitutional test mandates.
[243]Dellinger, *Of Rights and Remedies: The Constitution as a Sword,* 85 Harv. L. Rev. 1532, 1563 (1972).
[244]*See, e.g.,* Redish & Woods, *Supra* note 115, at 76-81.
[245]*See* Dellinger, *supra* note 243, at 1543-52.
[246]300 U.S. 227 (1937).
[247]*id.* at 240 (citations omitted).
[248]28 U.S.C. §§2671-80 (Supp. 1987).
[249]28 U.S.C. §2680(h) (Supp. 1987); *see also* Carlson v. Green, 446 U.S. 14, 19-20 (1980).
[250]*See supra* note 116.
[251]*See e.g.,* Carlson v. Green, 446 U.S. at 18-19; Davis v. Passman, 442 U.S. 228, 245-46 (1979); Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 396-97 (1971). Rotenberg, *supra* note 116, at 91-95, presents an excellent discussion of the evolution in the Court's view of the relationship between statutory and judicial remedies for constitutional violations.
[252]462 U.S. 367 (1983).
[253]*Id.* at 378.
[254]461 U.S. 95 (1983).
[255]*Id.* at 105-110.
[256]*See* Rotenberg, *supra* note 116, at 102-03 (discussing how the Court in *Lyons* might have fashioned an injunction in this case had it chosen to do so).
[257]*Id.* at 112-13.
[258]*See, e.g.,* Steinman, *Backing Off Bivens and the Ramifications of this Retreat for the Vindication of First Amendment Rights,* 83 Mich. L. Rev. 269 (1984);

"If plaintiff is afforded a remedy under the legislative scheme, then the court should independently determine whether the remedy adequately vindicates plaintiff's constitutional rights. . . . [I]f an individual's constitutional rights have not yet been violated, but the risk to him is sufficiently great that he meets the requirements of standing, a case or controversy, and the like, the relief afforded should take the form of prospective relief. A legislated remedy not 'facing in the right direction' would be constitutionally inadequate."

Id. at 283 (emphasis in original; footnotes omitted); Sager, *Foreword: Constitutional Limitations on Congress' Authority to Regulate the Jurisdiction of the Federal Courts*, 95 HARV. L. REV. 17, 85 (1981) ("[F]orbidding the federal courts to issue all constitutionally adequate remedies for a particular category of claims raises serious problems. . . . [T]he court in question must be empowered to grant relief that is at least reasonably effective.") (footnote omitted); Dellinger, *supra* note 243, at 1563:

"The fourth amendment does not grant the government the discretion to decide whether the benefits of infringing the public's right to be protected from unreasonable searches and seizures are worth some expenditure of the public's funds; the language of the amendment is an affirmative command. It is therefore doubtful that the substitution of a claim against the government for the exclusionary rule in all cases would provide equally effective vindication of the constitutional interests thus protected, and it is therefore doubtful that such a substitution would be constitutionally valid."

[259]Rotenberg, *supra* note 116, at 108–09, suggests:

"The Court needs to rethink the role of Congress concerning private remedies for constitutional wrongs. Ideally, the Court should protect remedies from congressional restrictions—whether they take the form of jurisdictional, substantive right, or remedy limitation. . . . The suggested limitation on Congress is only directed to its power to reduce private remedies below a due process minimum of appropriate relief. It is conceivable, therefore, that Congress could legislate appropriate relief in such a way that the Supreme Court would defer to congressional judgment in establishing an orderly remedial package."

[260]*See supra* sources cited in note 258.

[261]476 U.S. 227 (1986).●

TOM HANRAHAN'S PLIGHT

● Mr. SIMON. Mr. President, in a weekly column I write for newspapers in my State, I tell a story of a man from suburban Chicago who deserves better from his government. I hope by writing this column justice will finally be done. I ask that it be reprinted in the CONGRESSIONAL RECORD.

The article follows:

CAUGHT IN A BUREAUCRATIC CIRCLE

(U.S. Senator Paul Simon of Illinois)

Sometimes government offices and regulations permit people to fall through the cracks and the result is needless human misery.

Forty-two-year old Tom Hanrahan, who lives in the Chicago suburb of Lindenhurst, is an example. He is married and has four children.

Back in 1979, he worked at the Great Lakes Naval Training Station in Illinois, in a cold storage area where anhydrous ammonia fumes were always present.

Before working at Great Lakes, Hanrahan was the picture of health. Now he has chest pains, shortness of breath, insomnia, weakness, severe impairments in attention and concentration, memory loss and other symptoms.

He has not been able to work for eight years.

Hanrahan—and his statement is backed by five co-workers—says he was exposed to dangerous amounts of anhydrous ammonia during a five-month period in 1979, including one major leak.

His co-workers say the refrigeration system included lots of old piping and fittings which leaked ammonia into the building. Mechanical failures and leaks in the seals were a frequent problem. They also say the ammonia detectors never worked properly.

Both his doctors and government doctors say Hanrahan is suffering from obstructive and restrictive lung disease, although the decision was not unanimous among the government doctors. His doctor says exposure to ammonia caused permanent pulmonary and neurological damage. But the government has ruled that there is no proof that the anhydrous ammonia that Tom Hanrahan inhaled caused his physical disabilities.

To this date, Tom Hanrahan has received no workers' compensation benefits. He has been unable to break loose from the bureaucratic circle of the Chicago regional office of Workers' Compensation Programs and the Washington office. He has been the victim of lost records, separated files and a host of other things frustrating a final decision.

But Tom Hanrahan refuses to give up. These days he takes care of his four children in the family's home while his wife works. He is physically unable to hold a job. I've been trying to help, but the bogged down machinery makes it difficult even for a senator to get assistance.

Publishing this column and sending it to appropriate officials may help.

Tom Hanrahan worked for the federal government, and by all accounts did good work. Now that he cannot work, he should not be ignored by the government he served.

I'm going to keep fighting for him.●

ENERGY POLICY AND CONSERVATION ACT AMENDMENTS

Mr. BYRD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2203.

The PRESIDING OFFICER (Mr. LEVIN) laid before the Senate the following message from the House of Representatives.

Resolved, That the bill from the Senate (S. 2203) entitled "An Act to extend the expiration date of title II of the Energy Policy and Conservation Act", do pass with the following amendment:

Strike out all after the enacting clause and insert:

That section 281 of the Energy Policy and Conservation Act (42 U.S.C. 6285) is amended by striking "1988" both places it appears and inserting in lieu thereof "1990".

SEC. 2. STUDY AND REPORT ON ENERGY POLICY COOPERATION BETWEEN UNITED STATES AND THE OTHER WESTERN HEMISPHERE COUNTRIES.

(a) STUDY.—The Secretary of Energy, in consultation with the Secretary of State and the Secretary of Commerce, shall conduct a study to determine how best to enhance cooperation between the United States and the other countries of the Western Hemisphere with respect to energy policy including stable supplies of, and stable prices for, energy.

(b) REPORT.—On completion of the study described in subsection (a), the Secretary of Energy shall—

(1) report the results of such study to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate;

(2) propose a comprehensive international energy policy for the United States designed to enhance cooperation between the United States and the other countries of the Western Hemisphere; and

(3) recommend such action as the Secretary deems necessary to establish and implement such policy.

Mr. BYRD. Mr. President, I move that the Senate concur in the House amendments.

The motion was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. SIMPSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HELSINKI HUMAN RIGHTS DAY

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of Senate Joint Resolution 338.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask that the Senate proceed to the immediate consideration of Senate Joint Resolution 338.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 338) to designate August 1, 1988 as "Helsinki Human Rights Day."

The joint resolution (S.J. Res. 338) was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution (S.J. Res. 338), with its preamble, is as follows:

S.J. RES. 338

Whereas August 1, 1988, will be the thirteenth anniversary of the signing of the Final Act of the Conference on Security and Cooperation in Europe (hereafter in this preamble referred to as the "Helsinki accords");

Whereas on August 1, 1975, the Helsinki accords were agreed to by the Governments of Austria, Belgium, Bulgaria, Canada, Cyprus, Czechoslovakia, Denmark, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the Union of Soviet Socialist Republics, the United Kingdom, the United States of America, and Yugoslavia;

Whereas the participating States have committed themselves to balanced progress in all areas of the Helsinki accords;

Whereas the Helsinki accords recognize the inherent relationship between respect for human rights and fundamental freedoms and the attainment of genuine security;

Whereas the Helsinki accords express the commitment of the participating States to "recognize the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and cooperation among themselves as among all States";

Whereas the Helsinki accords also express the commitment of the participating States to "respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion";

Whereas the Helsinki accords also express the commitment of the participating States to "promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development";

Whereas the Helsinki accords also express the commitment of the participating States to "recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience";

Whereas the Helsinki accords also express the commitment of the participating States on whose territory national minorities exist to "respect the right of persons belonging to such minorities to equality before the law" and that such States "will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will in this manner, protect their legitimate interests in this sphere";

Whereas the Helsinki accords also express the commitment of the participating States to "constantly respect these rights and freedoms in their mutual relations" and that such States "will endeavor jointly and separately, including in cooperation with the United Nations, to promote universal and effective respect for them";

Whereas the Helsinki accords also express the commitment of the participating States to "conform the right of the individual to know and act upon his rights and duties in this field";

Whereas the Helsinki accords also express the commitment of the participating States in the field of human rights and fundamental freedoms to "act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights" and to "fulfill their obligations as set forth in the international declarations and agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be bound";

Whereas the Helsinki accords by incorporation also express the commitment of the participating States to guarantee the right of the individual to leave his own country and return to such country;

Whereas the Helsinki accords also express the commitment of the participating States to "facilitate freer movement and contacts, individually and collectively, whether privately or officially, among persons, institutions and organizations of the participating States, and to contribute to the solution of the humanitarian problems that arise in that connection";

Whereas the Helsinki accords also express the commitment of the participating States to "favorably consider applications for travel with the purpose of allowing persons to enter or leave their territory temporarily, and on a regular basis if desired, in order to visit members of their families";

Whereas the Helsinki accords also express the commitment of the participating States to "deal in a positive and humanitarian spirit with the applications of persons who wish to be reunited with members of their family" and "to deal with applications in this field as expeditiously as possible";

Whereas the Helsinki accords also express the commitments of the participating States to "examine favorably and on the basis of humanitarian considerations requests for exit or entry permits from persons who have decided to marry a citizen from another participating State";

Whereas the Helsinki accords also express the commitment of the participating States to "facilitate wider travel by their citizens for personal or professional reasons";

Whereas the Helsinki accords also express the commitment of the participating States to "facilitate the freer and wider dissemination of information of all kinds, to encourage cooperation in the field of information and the exchange of information with other countries";

Whereas the Governments of the Union of Soviet Socialist Republics, Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, and Romania, in agreeing to the Helsinki accords, have made a commitment to adhere to the principles of human rights and fundamental freedoms as embodied in the Helsinki accords;

Whereas, despite some limited improvements, the aforementioned Governments have failed to implement their obligations under Principle VII of the Helsinki accords to respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief;

Whereas, despite some limited improvements, the aforementioned Governments have failed to implement their obligations under Basket III of the Helsinki accords to promote free movement of people, ideas and information;

Whereas representatives from the signatory States are convened in Vienna to review implementation and address issues of compliance with the human rights and humanitarian provisions of the Helsinki accords: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) August 1, 1988, the thirteenth anniversary of the signing of the Helsinki accords is designated as "Helsinki Human Rights Day";

(2) the President is authorized and requested to issue a proclamation reasserting the American commitment to full implementation of the human rights and humanitarian provisions of the Helsinki accords, urging all signatory nations to abide by their obligations under the Helsinki accords, and encouraging the people of the United States to join the President and Congress in observance of the Helsinki Human Rights Day with appropriate programs, ceremonies, and activities;

(3) the President is further requested to continue his efforts to achieve full implementation of the human rights and humanitarian provisions of the Helsinki accords by raising, with the Governments of the Soviet Union, Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, and Romania, the issue of their noncompliance at every available opportunity;

(4) the President is further requested to convey to all signatories of the Helsinki accords that respect for human rights and fundamental freedoms is a vital element of further progress in the ongoing Helsinki process;

(5) the President is authorized to convey to allies and friends of the United States that unity on the question of respect for human rights and fundamental freedoms is an essential means of promoting the full implementation of the human rights and humanitarian provisions of the Helsinki accords;

(6) the President is requested to continue his efforts to achieve before the end of the Vienna meeting the release of all political prisoners of the Soviet Union, including Helsinki monitors, a significant increase in Soviet emigration, the resolution of all family reunification cases, the cessation of all radio transmission jamming, and the repeal of laws, procedures, and practices which undermine human rights;

(7) the President is further requested to seek the inclusion, in any concluding document agreed to in Vienna, of a mechanism to assure that human rights progress is sustained following the conclusion of the Vienna meeting; and

(8) the President is further requested to convey to signatory States the insistence of the United States for a balanced result at the Vienna meeting that will not favor military security at the expense of human rights.

SEC. 2. The Secretary of the Senate is directed to transmit copies of this joint resolution to the President, the Secretary of State, and the Ambassadors of the thirty-four Helsinki signatory nations.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. SIMPSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE EXECUTIVE CALENDAR

Mr. BYRD. Mr. President, I inquire of the able assistant Republican leader whether or not the following nominations have been cleared on his side of the aisle beginning with page 2 of the Executive Calendar, Calendar Nos. 718 and 721, and continuing through the remainder of this page through page 3, Department of State and the Ambassadors shown thereon, and that is it. And Calendar Order No. 717 on page 2, Department of the Treasury.

Mr. SIMPSON. Mr. President, all of those have been cleared on this side of the aisle. I greatly appreciate, again, the effort of the majority leader to address those. I appreciate it very much.

Mr. BYRD. Mr. President, I thank my friend.

EXECUTIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the aforementioned nominations, that

they be considered and confirmed en bloc, that the motion to reconsider en bloc be laid on the table, that the President be immediately notified of the confirmation of the nominees, that any Senators who wish to have statements included in the RECORD may do so at the appropriate place; that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and approved en bloc are as follows:

DEPARTMENT OF THE TREASURY

Jill E. Kent, of the District of Columbia, to be an Assistant Secretary of the Treasury, vice John F.W. Rogers, resigned.

DEPARTMENT OF STATE

Paul D. Taylor, of New York, a career member of the Senior Foreign Service, class of minister-counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Dominican Republic.

Robert South Barrett IV, of Virginia, a career member of the Senior Foreign Service, class of minister-counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Djibouti

Daniel Anthony O'Donohue, of Virginia, a career member of the Senior Foreign Service, class of minister-counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Thailand.

Mary A. Ryan, of Texas, a career member of the Senior Foreign Service, class of minister-counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Swaziland.

Jeffrey Davidow, of Virginia, a career member of the Senior Foreign Service, class of counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Zambia.

Richard Llewellyn Williams, of the District of Columbia, a career member of the Senior Foreign Service, class of minister-counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Mongolian People's Republic.

Philip D. Winn, of Colorado, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Switzerland.

Sheldon J. Krys, of Maryland, to be an Assistant Secretary of State, vice Donald J. Bouchard, resigned.

Warren Zimmermann, of Virginia, a career member of the Senior Foreign Service, class of career minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Socialist Federal Republic of Yugoslavia.

To be Ambassador

E. Allan Wendt, of California, a career member of the Senior Foreign Service, class of minister-counselor, for the rank of Ambassador during his tenure of service as senior representative for strategic technology policy in the Office of the Under Secretary of State for Coordinating Security Assistance Programs.

Stephen R. Hanmer, Jr., of Virginia, for the rank of Ambassador during his tenure of service as U.S. Negotiator for Strategic Nuclear Arms.

LEGISLATIVE SESSION

Mr. BYRD. Mr. President, does the leader on the other side of the aisle have any further statement he would like to make or any business he would like to transact?

Mr. SIMPSON. Mr. President, I do not. As I say without being at all repetitive, I appreciate the ability of the majority leader to extricate us from the situation which confronted us last night and today. It could certainly not have been done without his skill and craft. I appreciate it.

Mr. BYRD. Mr. President, I again thank my friend.

By the way, was there morning business today?

The PRESIDING OFFICER. There was morning business today.

MOTIONS AND RESOLUTIONS OVER, UNDER THE RULE DEEMED AS HAVING BEEN WAIVED

Mr. BYRD. Mr. President, I ask unanimous consent that motions and resolutions over, under the rule be deemed as having been waived today.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

PROGRAM

Mr. BYRD. Mr. President, on Monday, the Senate will convene at the hour of 10 o'clock a.m. After the two leaders have been recognized under the standing order, there will be morning business until 10:30 a.m. Senators may speak during that period for morning business for not to exceed 5 minutes each.

At 10:30 a.m., the Senate will resume consideration of the D.C. appropriations bill, at which time the pending question will be on the amendment by Mr. ARMSTRONG. There is a time limitation on that amendment of 10 minutes to be equally divided between Mr. ARMSTRONG and Mr. HARKIN, and that at the conclusion of that 10 minutes, the Senate will proceed to vote without further intervening action, motions, amendments, or debate on the Armstrong amendment.

Immediately upon the disposition of that amendment, the Senate, without further intervening action, motions, or debate, will proceed to vote on final passage of the D.C. appropriations bill. That is H.R. 4776.

Upon the disposition of the D.C. appropriations bill, the Senate then will proceed, under the order previously entered, to the consideration of S. 11, a bill to provide for judicial review of Veterans' Administration decisions denying claims for benefits. There is a time agreement on that bill.

And upon the disposition of that bill, the Senate will then proceed to the consideration of S. 533, a bill to establish the Veterans' Administration as an executive department. There is a time agreement on that bill.

And so the prospect for several rollcall votes on Monday morning is real, and Senators should be here at least by 10:40 a.m. The first vote will, of course, be a 15-minute rollcall vote, as always, and the call for the regular order will be automatic. There will be votes throughout the day.

Upon the disposition then of the two bills, S. 11 and S. 533, the Senate will proceed to the consideration of the HUD appropriations bill.

Mr. President, I think we had a good 3 days, and I look forward to a good weekend. I thank my good friend, the Senator from Wyoming.

RECESS UNTIL MONDAY, JULY 11, 1988, AT 10 A.M.

Mr. BYRD, Mr. President, if there be no further business then to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 10 o'clock on Monday morning next.

The motion was agreed to; and the Senate, at 4:51 p.m., recessed until 10 a.m., Monday, July 11, 1988.

CONFIRMATIONS

Executive nominations confirmed by the Senate July 8, 1988:

DEPARTMENT OF THE TREASURY

JILL E. KENT, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY OF THE TREASURY.

DEPARTMENT OF STATE

PAUL D. TAYLOR, OF NEW YORK, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE DOMINICAN REPUBLIC.

ROBERT SOUTH BARRETT IV, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF DJIBOUTI.

DANIEL ANTHONY O'DONOHUE, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF THAILAND.

MARY A. RYAN, OF TEXAS, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF SWAZILAND.

JEFFREY DAVIDOW, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRADORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ZAMBIA.

RICHARD LLEWELLYN WILLIAMS, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE MONGOLIAN PEOPLE'S REPUBLIC.

PHILIP D. WINN, OF COLORADO, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO SWITZERLAND.

SHELDON J. KRYS, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF STATE.

WARREN ZIMMERMANN, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE

UNITED STATES OF AMERICA TO THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA.

E. ALLAN WENDT, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS SENIOR REPRESENTATIVE FOR STRATEGIC TECHNOLOGY POLICY IN THE OFFICE OF THE UNDER SECRETARY OF STATE FOR COORDINATING SECURITY ASSISTANCE PROGRAMS.

STEPHEN R. HANMER, JR., OF VIRGINIA, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS U.S. NEGOTIATOR FOR STRATEGIC NUCLEAR ARMS.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.